

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

Case No. 10-20075

Hon. A. Tarnow

ALISTAIR RUFUS McGEE,  
also known as Stir,

Defendant.

\_\_\_\_\_/

VOLUME 2  
TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE ARTHUR J. TARNOW  
UNITED STATES DISTRICT COURT SENIOR JUDGE  
Detroit, Michigan  
Wednesday, October 6, 2010

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I N D E X

| <u>WITNESS:</u>                         | <u>PAGE</u> |
|---|-------------|
| <b>RICHARD MICHAEL JURY</b>             |             |
| Direct-Examination by Mr. Feller        | 8           |
| Cross-Examination by Mr. Burgess        | 12          |
| <b>HOWARD LOUIS BARKLEY</b>             |             |
| Direct-Examination by Mr. Feller        | 14          |
| Cross-Examination by Mr. Burgess        | 38          |
| Redirect-Examination by Mr. Feller      | 72          |
| Recross-Examination by Mr. Burgess      | 79          |
| <b>JEFFREY PACHOLSKI</b>                |             |
| Direct-Examination by Mr. Feller        | 83          |
| Cross-Examination by Mr. Burgess        | 94          |
| Redirect-Examination by Mr. Feller      | 111         |
| <b>GOVERNMENT RESTS</b>                 | 113         |
| <b>DEFENDANT RESTS</b>                  | 115         |
| <b>CLOSING ARGUMENTS</b>                |             |
| Closing Argument by Mr. Feller          | 117         |
| Closing Argument by Mr. Burgess         | 126         |
| Rebuttal Closing Argument by Mr. Feller | 138         |
| <b>JURY INSTRUCTIONS</b>                |             |
| (Not transcribed.)                      | 147         |
| <b>JURY VERDICT</b>                     | 148         |
| <b>MOTION TO REMAND DEFENDANT</b>       | 151         |

E X H I B I T S

| <u>EXHIBIT NO.</u> | <u>IDENTIFICATION</u>       | <u>PAGE</u> |
|--------------------|-----------------------------|-------------|
| Government         |                             |             |
| 6                  | McGee assault rifle photo   | 28          |
| 7                  | Porter firearm photos       | 11          |
| 8                  | Barkley assault rifle photo | 27          |
| 19                 | Barkley statement           | 112         |
| 20                 | Barkley statement           | 112         |

1 Detroit, Michigan

2 Wednesday, October 6, 2010

3 8:45 a.m.

4 - - -

5 *(Jury not present.)*

6 MR. FELLER: Good morning, Your Honor. Leonid  
7 Feller, for the United States.

8 MR. BURGESS: Good morning, Your Honor. May it  
9 please this Honorable Court, David Burgess, on behalf of  
10 Alistair McGee.

11 THE COURT: Good morning. Good morning,  
12 Mr. McGee.

13 MR. McGEE: Good morning.

14 THE COURT: You have something you want to bring  
15 to my attention?

16 MR. FELLER: Your Honor, two very, very brief  
17 issues.

18 One is Mr. Burgess and I have discussed the  
19 issue of a possible withdrawal instruction. I think we agree  
20 at this point that withdrawal is not a defense to an 846  
21 conspiracy charge. So, Mr. Burgess will not be arguing  
22 withdrawal and the Government therefore does not need the  
23 instruction.

24 MR. BURGESS: That's correct, Your Honor.

25 THE COURT: All right. What else?

1 MR. FELLER: Your Honor, you had mentioned  
2 yesterday having a computer for the jury during their  
3 deliberations.

4 It's come to my attention that Department of  
5 Justice policy won't allow us to give them a computer to use  
6 on their own. Traditionally what we do, if they want to see  
7 some part of the recordings or all the recordings played back,  
8 is we would bring them back into the courtroom.

9 THE COURT: What's the Justice Department policy  
10 about following judges' court orders?

11 MR. FELLER: Which was exactly my response, Your  
12 Honor. And I am happy to follow your orders.

13 THE COURT: All right.

14 MR. FELLER: There are practical issues. All  
15 the computers are password protected. It's just going to be  
16 very hard for them to accomplish it as a practical matter in  
17 there. So . . .

18 THE COURT: Let me see if I understand.

19 I assume that it's password protected when you  
20 turn it on to get into the computer, correct?

21 MR. FELLER: Correct. And it also times out  
22 after -- if you don't use it for five minutes.

23 THE COURT: You have your tekkies change the  
24 timeout period and you can start it and we will give it to  
25 them so they don't need to know the password or,

1       alternatively, you can tell them the password and then change  
2       it after the jury deliberations. That's probably the better  
3       way.

4                   MR. FELLER: I will see if that's possible, Your  
5       Honor. I am happy to comply. I . . .

6                   THE COURT: You go right up that chain of  
7       command. The highest one who says no will be in here.

8                   MR. FELLER: Okay.

9                   THE COURT: Who was in here yesterday checking  
10      out to see if you were using the computer properly, by the  
11      way?

12                  MR. FELLER: Oh, I don't know.

13                  THE COURT: No, I'm telling you that the highest  
14      person over there was scouting you.

15                  MR. FELLER: Oh, I didn't know.

16                  THE COURT: You were at your best. Probably  
17      will get a merit raise.

18                  MR. FELLER: That's wonderful, Your Honor.

19                  THE COURT: Actually, I think she was watching  
20      your tekkie.

21                  MR. FELLER: Even better.

22                  THE COURT: Okay.

23                  MR. FELLER: Your Honor, also just as a  
24      practical matter on the computer, either we can give them the  
25      original exhibit -- well, we can give the original exhibit, so

1 they will pop them in and play the whole way through.

2 What we are playing on the screen with the  
3 closed captioning is a program called Sanction. I don't know  
4 if they will be able to operate that on their own.

5 THE COURT: You will do your best.

6 Actually -- okay. Are we ready?

7 MR. BURGESS: Yes, Your Honor.

8 MR. FELLER: The Government is ready.

9 THE COURT: Do we have copies of all these  
10 instructions now?

11 MR. FELLER: We do, Your Honor.

12 THE COURT: Where are they?

13 MR. FELLER: Again, we just need to pull --  
14 Oliver has to at some point pull a page out depending on  
15 whether or not the Defendant testifies.

16 THE COURT: Okay. That's great.

17 You ready, Mr. Burgess?

18 MR. BURGESS: I am, Your Honor.

19 THE COURT: All right. Would you bring in the  
20 jury, please.

21 And all rise for the jury.

22 *(Jury enters the courtroom at 8:52 a.m.)*

23 THE COURT: Good morning.

24 JURORS: Good morning.

25 THE COURT: I'm impressed. The first day you

1 came in in the right order. It usually takes two or three  
2 days.

3 We are ready to go. Please be seated.

4 You may call your next witness.

5 MR. FELLER: Your Honor, the Government calls  
6 ATF Special Agent Richard Jury.

7 THE COURT: Raise your right hand.

8 RICHARD MICHAEL JURY , GOVERNMENT'S WITNESS, SWORN.

9 THE COURT: Please be seated. Adjust the  
10 microphone so we can hear you.

11 A. Thank you, Your Honor.

12 DIRECT-EXAMINATION

13 BY MR. FELLER:

14 Q. Would you state your full name and spell your last name on  
15 the record, please?

16 A. Richard Michael Jury, J-U-R-Y.

17 Q. What do you do, sir?

18 A. A Special Agent with the Bureau of Alcohol, Tobacco and  
19 Firearms and Explosives.

20 Q. Is that commonly known as the ATF?

21 A. Yes.

22 Q. What do you do for ATF?

23 A. I enforce firearms, narcotics violations, violent crime in  
24 the city of Detroit.

25 Q. Okay. And how long have you been with ATF?



1 A. Five years.

2 Q. On February 2nd, 2010, were you involved with an arrest  
3 and then subsequent events related to Dennis Porter, Howard  
4 Barkley and Mr. McGee?

5 A. Yes.

6 Q. Was one of your assignments that day to conduct a search  
7 of Mr. Porter's mother's house?

8 A. Yes, it was.

9 Q. For what purpose?

10 A. We had received information that there was possibly  
11 firearms were going to be present at the mother's residence  
12 that were being stored there by Dennis Porter.

13 Q. All right. There is an exhibit book in front of you.  
14 I'll ask you to take a look at Exhibit 7 and see if you can  
15 identify the four images contained in Exhibit 7?

16 A. Yes. The first exhibit is a Ruger Mini-14 --

17 Q. We will do that in a second. Just tell me if you can  
18 identify it.

19 A. I apologize.

20 These were firearms that were recovered during  
21 the search of 14118 St. Mary's.

22 Q. That is Mr. Porter's mother's house?

23 A. Yes, sir.

24 Q. What are the pictures? Where were those actually --

25 THE COURT: Hang on a second, please.

1 Yes?

2 JUROR NO. 8: We can't see the Defendant.

3 MR. FELLER: I'm sorry.

4 THE COURT: Okay. Is that better?

5 JUROR NO. 8: Yes. Thank you.

6 THE COURT: Okay. His office has bragged about  
7 their transparency, but it doesn't go that far. You can't see  
8 through him.

9 MR. FELLER: Thank you, Your Honor.

10 BY MR. FELLER:

11 Q. Agent Jury, where were those photographs taken?

12 A. It appears they were taken in one of the vaults at the ATF  
13 office here in Detroit.

14 Q. All right. And do those photographs bear and accurate  
15 depiction of the firearms that you found at Mr. Porter's  
16 mother's house?

17 A. Yes.

18 MR. FELLER: Your Honor, I would offer Exhibit 7  
19 into evidence.

20 THE COURT: Any objection, Mr. Burgess?

21 MR. BURGESS: I would object to the relevance,  
22 Your Honor. I don't see what they have to do with Mr. McGee.

23 THE COURT: Your objection is noted.

24 MR. BURGESS: Thank you.

25 THE COURT: The exhibits are admitted.

1                   (Government Exhibit 7 was admitted into  
2                   evidence.)

3 BY MR. FELLER:

4 Q. If you could just take us through the four or five  
5 firearms one-by-one?

6 A. This is a Ruger Mini-14 .223 caliber rifle that was  
7 recovered from the basement storage room of Dennis Porter's  
8 mother's residence.

9 Q. Okay. Next image?

10 A. This is a -- let me make sure I get this right. It's  
11 going to be a 12-gauge Mossberg shotgun that was recovered  
12 from the basement of the residence.

13 Q. Okay. Next image?

14 A. It's a 20-gauge Springfield shotgun that was recovered  
15 from the basement of the residence.

16 Q. All right. Next image?

17 A. It's a .40 caliber HMK handgun that was recovered from the  
18 basement -- my mistake. That was recovered from the first  
19 floor kitchen area of the residence.

20 Q. Okay. Have you had an opportunity to review either the  
21 original audio recording or the transcript of a recorded  
22 telephone conversation on February 1st, 2010?

23 A. Yes, I have.

24 Q. And that conversation is between Mr. Porter and a  
25 confidential informant known as Nop, correct?

1 A. That's correct.

2 Q. On that recording does Mr. Porter describe a robbery that  
3 had just taken place in which firearms were stolen?

4 A. Yes, he does.

5 Q. Okay. Are one or more of the firearms recovered from  
6 Mr. Porter's mother's house consistent with the firearms  
7 described by Mr. Porter as having been taken during that  
8 robbery?

9 A. Yes. Two of the firearms that were discussed were  
10 recovered were similar to the firearms recovered from Dennis  
11 Porter's mother's residence.

12 MR. FELLER: That's all the questions I have for  
13 Agent Jury.

14 THE COURT: Cross-examination?

15 MR. BURGESS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BURGESS:

18 Q. Agent Jury, is that . . .

19 A. Yes, that's correct.

20 Q. Just so I'm clear, the Government, Mr. Feller asked you  
21 some questions about an arrest on February 2nd.

22 Mr. McGee wasn't arrested on February 2nd, was  
23 he?

24 A. No, he was not.

25 Q. Okay. Mr. Porter was?

1 A. Yes, he was.

2 Q. And all of these guns you are talking about, you testified  
3 to today, are -- were in Mr. Porter's house, correct?

4 A. They were in Dennis Porter's mother's residence.

5 Q. Thank you. His mother's residence.

6 Did you ever search Mr. McGee's residence?

7 A. No, I did not.

8 Q. Anything preventing you from doing that that you know of?

9 A. I was not the case agent. I was -- during the search of  
10 the 14118 St. Mary's residence in the Detroit, I was assisting  
11 on the case.

12 Q. Okay. So, to your knowledge, anything preventing you from  
13 searching Mr. McGee's house or residence to your knowledge?

14 A. I would not have any knowledge of that.

15 Q. Were any of these guns preserved for any physical evidence  
16 tests, fingerprints, DNA, anything like that?

17 A. Typically when any firearms are recovered, they are held  
18 for print if they believe that -- unless it's purchased from  
19 an individual, it would be held for prints, yes.

20 Q. Do you know if these particular guns were held for prints?

21 A. I would not have that knowledge.

22 MR. BURGESS: No further questions.

23 MR. FELLER: Nothing further, Your Honor.

24 THE COURT: Any questions from the jury?

25 You may step down.

1 Thank you. You may call your next witness.

2 A. Thank you, Your Honor.

3 MR. FELLER: Your Honor, the United States calls  
4 Howard Barkley.

5 THE COURT: Good morning. Would you raise your  
6 right hand, please.

7 HOWARD LOUIS BARKLEY, GOVERNMENT'S WITNESS, SWORN.

8 THE COURT: Please be seated. Adjust the  
9 microphone.

10 And you may begin.

11 MR. FELLER: Your Honor, is it all right if I  
12 just stay right here?

13 THE COURT: Sure.

14 DIRECT-EXAMINATION

15 BY MR. FELLER:

16 Q. Sir, would you state your name and spell your last name?

17 A. Howard Louis Barkley, B-A-R-K-L-E-Y.

18 Q. How old a man are you, sir?

19 A. 32 years old.

20 Q. And do you have a family?

21 A. Yes, I do.

22 Q. Are you married?

23 A. Yes, I am.

24 Q. Do you have children?

25 A. Yes, I do.

1 Q. How old are your children?

2 MR. BURGESS: Objection, relevance.

3 A. 12 and 13.

4 THE COURT: The objection is sustained.

5 BY MR. FELLER:

6 Q. Mr. Barkley, putting aside this case -- and we'll talk  
7 about this case -- do you have any criminal history?

8 A. Yes, I do.

9 Q. Could you describe that for the jury?

10 A. I have an intent to deliver marijuana.

11 Q. Okay. When was that?

12 A. 2001.

13 Q. Okay. Any other criminal convictions other than the 2001  
14 marijuana charge?

15 A. No, sir.

16 Q. Anything traffic related?

17 A. Yes.

18 Q. What is that?

19 A. Traffic warrants, too.

20 Q. Is that for driving with a suspended license?

21 A. Yes.

22 Q. All right. Could I just ask you to speak into the  
23 microphone.

24 All right. So, those are your criminal  
25 convictions.

1                   Again, putting aside this case, is there any  
2 criminal conduct for which you haven't been charged that you  
3 were involved in?

4       A.   Yes, it is.

5       Q.   Can you describe that?

6       A.   In maybe '97 or so, I was involved in a home invasion.

7       Q.   Okay. And can you describe that a little bit?

8       A.   Just a regular break-in.

9       Q.   Okay. Anyone home during that break-in?

10      A.   Yes, it was.

11      Q.   All right. Any violence done to that person?

12      A.   No, it wasn't.

13      Q.   What was taken?

14      A.   Just clothes and money and guns.

15      Q.   I'm sorry. I didn't . . .

16      A.   Just clothes, like guns and a little bit of money.

17      Q.   All right. Any other criminal conduct besides that '97  
18 robbery?

19      A.   Yes, in November.

20      Q.   November of 2009?

21      A.   Yes.

22      Q.   What happened in November of 2009?

23      A.   A friend of mine broke into another home and stole some  
24 pounds of marijuana.

25      Q.   Okay. And what was your role when your friend stole these



1 pounds of marijuana?

2 A. I took him over there.

3 Q. You drove over there?

4 A. Yes, I drove him over there.

5 Q. Did you go inside that residence?

6 A. No, I did not.

7 Q. All right. Now, you have entered a guilty plea in this  
8 case, correct?

9 A. Yes, I have.

10 Q. All right. There is a book in front of you. Let me ask  
11 you to take a look at Exhibit 9 and tell us if you can  
12 identify that document?

13 A. You say 9?

14 Q. Yes.

15 A. I have it.

16 Q. Can you identify that document?

17 A. Yes, I can.

18 Q. What is that?

19 A. It's a plea agreement.

20 Q. Okay. Is that your plea agreement in this case?

21 A. Yes, it is.

22 Q. Okay. Let me ask you to turn to Exhibit 10.

23 Can you identify that document?

24 A. Yes, I can.

25 Q. What is that document?

1 A. It's a cooperation agreement.

2 Q. Your cooperation agreement in this case?

3 A. Yes, my cooperation agreement.

4 MR. FELLER: Your Honor, I would offer Exhibits  
5 9 and 10 into evidence.

6 MR. BURGESS: No objection.

7 THE COURT: They are received.

8 *(Government Exhibits 9 and 10 were admitted into*  
9 *evidence.)*

10 BY MR. FELLER:

11 Q. Okay. And if we could start with Exhibit 9. This is the  
12 cover page to your plea agreement?

13 A. (No response.)

14 Q. You can flip through the book or you can look up on the  
15 screen up there or the screen in front of you, whatever is  
16 easier for you to do.

17 Again, Howard Louis Barkley, that's you?

18 A. Yes.

19 Q. Okay. And, again, if we can go to page nine.

20 Is that your signature in the bottom right-hand  
21 corner?

22 A. Yes, it is.

23 Q. Okay. And this was signed in March of 2010, correct?

24 A. Yes, it was.

25 Q. Okay. Let's go to page three. Okay. If we can highlight

1 the agreed guideline range.

2 Your plea in this case will carry a guideline  
3 sentence range of approximately, depending on some subsequent  
4 calculations, either 10 to 12 years or about 15 to 20 years.  
5 Do you understand that?

6 A. Yes.

7 Q. It also carries a mandatory minimum sentence of 10 years.  
8 You understand that as well?

9 A. Yes, I do.

10 Q. Okay. Let's go to Exhibit 10.

11 Again, this is your cooperation agreement?  
12 Howard Louis Barkley, that's you?

13 A. Yes.

14 Q. All right. Let's go to page four. And if we could  
15 highlight that top paragraph A, the top half of it.

16 Mr. Barkley, if you could read just the first  
17 sentence in that paragraph?

18 A. "Truthful information and testimony. Defendant will  
19 provide truthful and complete information concerning all facts  
20 of this case and other criminal wrongdoing known to him."

21 Q. Mr. Barkley, is it your understanding that the only  
22 possible way for you to receive a benefit is if you provide  
23 truthful information?

24 A. Yes.

25 Q. Okay. And that is, in fact, what your cooperation

1 agreement expressly requires, correct?

2 A. Yes.

3 Q. All right. Let's go to page four of the cooperation  
4 agreement. And if we could highlight paragraph A, 2A.

5 Mr. Barkley, is it your understanding that in  
6 exchange for your testimony here today, the Government may  
7 make a recommendation to the judge for you to receive a lower  
8 sentence than what is provided for in your agreement?

9 A. Yes.

10 Q. Okay. Who is your sentence ultimately up to?

11 A. My judge.

12 Q. Okay. Is it up to me?

13 A. No, it isn't.

14 Q. Can I decide what your sentence is?

15 A. No.

16 Q. Who decides what your sentence is?

17 A. The judge.

18 Q. Okay. And, again, what do you have to do to even warrant  
19 a recommendation for a lower sentence?

20 A. Tell the truth.

21 MR. FELLER: Okay. You can take that down.

22 BY MR. FELLER:

23 Q. There is a gentleman sitting to the left of me in a blue  
24 shirt. I would ask you to identify that individual --

25 A. Stir.

1 Q. -- if you can?

2 I'm sorry?

3 A. Stir.

4 Q. Is that how you knew him?

5 A. Yes.

6 Q. By the name Stir?

7 A. Yes.

8 Q. Have you subsequently learned what his real name is?

9 A. Yes, I have.

10 Q. What is his real name, if you know?

11 A. Alistair McGee.

12 Q. Okay. Did you know that name at the time you had dealings  
13 with him prior to today?

14 A. No, I didn't.

15 Q. Can you tell the jury how you first met Stir?

16 A. I met him through my neighborhood just growing up. I know  
17 his little sister, and I began to know him, see him in a lot  
18 of clubs, parties.

19 Q. Okay. And I'll ask you to speak right into the microphone  
20 if you can. Keep your voice up.

21 Did there come a time in 2008 when you became  
22 more friendly with Stir, Mr. McGee?

23 A. Yes, I did.

24 Q. Okay. And what sorts of activities -- did you become  
25 friends?

1 A. Yes, you can say that.

2 Q. All right. What sorts of activities would you engage in  
3 together?

4 A. Maybe just hanging out, partying, going out, drinking,  
5 whatever, smoking. Just hanging out with each other.

6 Q. All right. Smoking what?

7 A. Marijuana.

8 Q. All right. Was there a time when you were at Mr. McGee's  
9 home in late January of 2010?

10 A. Yes, it was.

11 Q. All right. And was Mr. McGee acting in any way unusual on  
12 this occasion in late January of 2010 when you were at his  
13 house?

14 A. Yeah. Yes, he was.

15 Q. All right. What was he doing that was unusual?

16 A. Looking back and forth out of the window watching his  
17 neighbor.

18 Q. Watching his neighbor or watching his name's house?

19 A. Watching his neighbor, his neighbor's house too.

20 Q. What was the neighbor doing?

21 A. Just pulling back and forth in the driveway, pulling up,  
22 going in and out of the house.

23 Q. Okay. Did you ask Mr. McGee why it is that he was  
24 watching his neighbor pull back and forth in his driveway?

25 A. Yes, I did.

1 Q. Okay. And what, if anything, did Mr. McGee say?

2 A. I believe that the neighbor had some work.

3 Q. I'm sorry. This is what Mr. McGee said?

4 A. Yeah.

5 Q. That the neighbor had some work?

6 A. Yeah.

7 Q. Okay. And what did you take some work to mean?

8 MR. BURGESS: Objection. Speculation.

9 THE COURT: He can tell what he thought.

10 A. Cocaine, drugs.

11 BY MR. FELLER:

12 Q. Okay. Is that a common way to refer to cocaine and drugs,  
13 as work?

14 A. Yes, it is.

15 Q. Okay. Did Mr. McGee say he intended to do anything with  
16 respect to the neighbor having -- possibly having some work?

17 A. Yes.

18 Q. What did Mr. McGee say he intended to do?

19 A. Put together a robbery.

20 Q. Put together a robbery of?

21 A. Of the neighbor.

22 Q. Okay. Did Mr. McGee say whether he himself would  
23 participate in that robbery?

24 A. No, he wouldn't.

25 Q. Why would Mr. McGee himself not participate?

1 A. Because his neighbors knew him.

2 Q. Because his neighbors know him?

3 A. Yes.

4 Q. And so if the neighbors saw Mr. McGee, that would be a  
5 problem?

6 A. Yes.

7 Q. Okay. Did Mr. McGee ask you to participate in the robbery  
8 of the neighbor's house?

9 A. Yes.

10 Q. Did you agree to do that?

11 A. Yes. I couldn't get around to do it, no.

12 Q. To participate in the robbery of the neighbor's house?

13 A. Yes.

14 Q. Okay. Why did you not participate in the robbery of the  
15 neighbor's house?

16 A. I wasn't -- I couldn't even get around. I wasn't around  
17 at the time.

18 Q. What does that mean, you weren't around?

19 A. No, I couldn't do it.

20 Q. Okay. Why couldn't you do it?

21 A. Because I was at home. I had my kids.

22 Q. Okay. Do you know, if you know, why would Mr. McGee ask  
23 you to participate in the robbery?

24 MR. BURGESS: Objection, speculation.

25



1 BY MR. FELLER:

2 Q. If you know.

3 A. Maybe because I was --

4 THE COURT: Hang on just a second.

5 Ask the first question. Do you know.

6 BY MR. FELLER:

7 Q. Do you know why Mr. McGee would have asked you to  
8 participate in this robbery?

9 A. Yes. Because I wasn't employed at the time and I needed  
10 the money.

11 Q. Was Mr. McGee aware of your prior robbery in 1997?

12 A. I believe I told him about it before.

13 Q. Okay. Was he also aware of the event in late 2009 where  
14 you drove to steal some bricks?

15 A. Yes.

16 Q. All right. But if I understand correctly, you decided not  
17 to participate in the robbery of the neighbor's house?

18 A. Yes.

19 Q. Okay. The following day did you receive a call from  
20 Mr. McGee?

21 A. Yes.

22 Q. Okay. And what on that call did Mr. McGee say?

23 A. That Denny Moe and a couple other guys went inside the  
24 house.

25 Q. Inside the neighbor's house?

1 A. Yes.

2 Q. Okay. And what, if anything, did Mr. McGee say was taken  
3 from the neighbor's house?

4 A. A bunch of guns and money.

5 Q. Okay. Did Mr. McGee ask you to meet him anywhere?

6 A. Yes, I did.

7 Q. Did he ask you to meet him somewhere?

8 A. Oh. Yes.

9 Q. Where did he ask you to meet him?

10 A. I met him at his cousin's house.

11 Q. Okay. At Mr. McGee's cousin's house?

12 A. Yes.

13 Q. Okay. And what, if anything, did you see in the cousin's  
14 house?

15 A. Guns.

16 Q. Okay. Where in the cousin's house specifically?

17 A. In the basement of his cousin's house.

18 Q. Did Mr. McGee ask you to do anything with respect to any  
19 of those guns?

20 A. Yes.

21 Q. What did he ask you to do?

22 A. He asked me to put one up for him.

23 Q. What does that mean, put one up for him?

24 A. To hold it in my possession for a couple days.

25 Q. Okay. And why would he -- do you know why he asked you to

1 do that?

2 A. He already had a couple guns already in his possession.

3 Q. Okay. Let me ask you to take a look at Exhibit 8 in the  
4 book in front of you.

5 Can you identify that?

6 A. Yes.

7 Q. What is it?

8 A. Assault rifle.

9 Q. Okay. And can you identify that as the firearm that  
10 Mr. McGee asked you to put up?

11 A. Yes.

12 MR. FELLER: Okay. Your Honor, I would offer  
13 Exhibit 8 into evidence.

14 MR. BURGESS: No objection.

15 THE COURT: It's received.

16 *(Government Exhibit 8 was admitted into*  
17 *evidence.)*

18 BY MR. FELLER:

19 Q. Okay. And, again, this is the gun Mr. McGee asked you to  
20 put up?

21 A. Yes.

22 Q. Okay. And did you, in fact, direct agents to this firearm  
23 in your home after you were arrested?

24 A. Yes.

25 Q. During your various interactions with Mr. McGee, do you

1 know whether he had any firearms in his possession?

2 A. I seen him with a couple of them.

3 Q. Okay. And I think you just testified, in fact, that he  
4 already had a couple guns at his house, correct?

5 A. Yes.

6 Q. All right. Let me ask you if you can identify Exhibit 6  
7 in the book?

8 A. Yes.

9 Q. What is Exhibit 6?

10 A. Assault rifle.

11 Q. Okay. And can you identify that as one of the firearms  
12 you saw in Mr. McGee's possession?

13 A. Yes.

14 MR. FELLER: Your Honor, I would offer Exhibit 6  
15 into evidence.

16 MR. BURGESS: No objection.

17 THE COURT: Received.

18 *(Government Exhibit 6 was admitted into*  
19 *evidence.)*

20 BY MR. FELLER:

21 Q. Okay. And, again, this is a firearm you saw at Mr.  
22 McGee's house?

23 A. Yes.

24 Q. Okay. When you were at Mr. McGee's cousin's house, did he  
25 say anything to you with respect to any other robberies?

1 A. Yes.

2 Q. What did he say to you?

3 A. He said that Denny Moe had a lick-up tomorrow.

4 Q. Okay. And Denny Moe, did you subsequently learn Denny  
5 Moe's real name?

6 A. Yes.

7 Q. And what is that?

8 A. Dennis Porter.

9 Q. Okay. So, Mr. McGee tells you that Denny Moe has a  
10 lick-up tomorrow; is that what he said?

11 A. Yes.

12 Q. Okay. And what is a lick?

13 A. A robbery.

14 Q. Okay. Did he say what the robbery involved?

15 A. Involved cocaine, some birds.

16 Q. Did he say cocaine or did he say birds?

17 A. He said birds.

18 Q. What did you understand birds to mean?

19 A. Cocaine.

20 Q. Did he say the quantity of cocaine that would be involved  
21 in this robbery?

22 A. He said Denny Moe's connection was getting six, but maybe  
23 more.

24 Q. Did he explain to you that there was an inside person in  
25 relation to the robbery?

1 A. Yes.

2 Q. Okay. And did he refer to that as Denny Moe's connection?

3 A. Yes.

4 Q. All right. And he said with respect to that person he was  
5 getting how many?

6 A. Six.

7 Q. Six what?

8 A. Six birds.

9 Q. Okay. What is a bird? Is that a quantity of cocaine?

10 A. Yes. It is a key of cocaine.

11 Q. A key?

12 A. Yes.

13 Q. And what is a key?

14 A. A kilogram, cocaine.

15 Q. It's a kilogram of cocaine?

16 A. Yes.

17 Q. All right. So, the connect was supposed to be getting six  
18 and there would be more at the robbery?

19 A. Yes.

20 Q. That's what Mr. McGee said to you?

21 A. Yes.

22 Q. Okay. Did he ask you to participate in that robbery that  
23 Denny Moe had set up?

24 A. Yes.

25 Q. Did you agree to participate in that?

1 A. Yes, I did.

2 Q. Why did you agree to participate in the second robbery,  
3 having turned down the robbery of the neighbor's house the day  
4 before?

5 A. I kind of believed it wasn't nothin' -- the first robbery,  
6 I kind of believed there wasn't nothin' there and the second  
7 robbery I believed there was.

8 Q. If you discussed it, what was your role to be in the  
9 robbery?

10 A. I discussed that I would drive there and get a portion of  
11 the cocaine.

12 Q. All right. So, your role was to be the driver?

13 A. Yes.

14 Q. And is that consistent with what you had done back in  
15 November of 2009?

16 A. Yes.

17 Q. Did you subsequently agree to meet Mr. McGee, Mr. Porter  
18 and the connect at a coney island?

19 A. Yes.

20 Q. Okay.

21 MR. FELLER: If we could get Exhibit 5 up at one  
22 seventeen thirty.

23 Yeah, one hour 17 minutes -- no, just 17:30.

24 BY MR. FELLER:

25 Q. Mr. Barkley, were you late to this meeting?

1 A. Yes.

2 Q. Okay. Were there a series of points in time when -- well,  
3 did you receive any phone calls from Mr. McGee on your way to  
4 the meeting?

5 A. Yes.

6 Q. And what was the substance of those phone calls?

7 A. Why was I late.

8 Q. Why were you late, if you remember?

9 A. I was doing something else.

10 Q. Okay. And did you eventually arrive at the meeting?

11 A. Yes.

12 Q. At the coney island?

13 A. Yes.

14 Q. And is that you that we see in the image from Exhibit 5 at  
15 approximately 17 minutes 29 seconds?

16 A. Yes.

17 Q. Okay. Again, who else was present for that meeting when  
18 you arrived?

19 A. Denny Moe, Stir, and two other guys.

20 Q. Okay. One was Nop?

21 A. Yes.

22 Q. He turned out to be a confidential informant?

23 A. Yes.

24 Q. And the other was the undercover ATF agent?

25 A. Yes.



1 Q. Okay. To your understanding, what was the purpose of the  
2 meeting at the coney island?

3 A. To understand what was going on.

4 Q. And the robbery, that was to take place when?

5 A. Probably about an hour after that.

6 Q. Okay. Did anyone -- following the coney island meeting  
7 everyone leaves, correct?

8 A. Yes.

9 Q. For what purpose?

10 A. We left to go switch cars and get guns.

11 Q. And get guns? For use in the robbery?

12 A. Yes.

13 Q. Okay. Who -- there's various individuals leaving in  
14 various cars.

15 Can you tell the jury who leaves with who, if  
16 you know, from the coney island?

17 A. We all left separately, and then I met Stir at his house  
18 and then --

19 Q. All right. Slow down. Slow down.

20 So, you leave by yourself in your own vehicle?

21 A. Yes.

22 Q. From the coney island?

23 A. Yes.

24 Q. And you go where?

25 A. To Stir's house.

1 Q. Okay. And is Stir at his house --

2 A. Yes.

3 Q. -- when you get there?

4 A. Mm-hmm.

5 Q. Anyone else at Mr. McGee's house when you get there?

6 A. I didn't go in. Just the people who stay there.

7 Q. All right. Does Mr. McGee go inside?

8 A. Yes.

9 Q. Does he come out of the house with anything?

10 A. Yes. With an assault rifle.

11 Q. All right. Do you and Mr. McGee each leave separately  
12 from his house or do you leave together?

13 A. We leave together.

14 Q. All right. Who is driving when you leave together?

15 A. I'm driving.

16 Q. Okay. So, you're driving. Mr. McGee is the passenger?

17 A. Yes.

18 Q. Anyone else in the vehicle at that point?

19 A. No.

20 Q. All right. Where are you headed from Mr. McGee's house  
21 where he has picked up an assault rifle?

22 A. Back to his cousin's house that we went to the day before.

23 Q. All right. And why are you going to his cousin's house?

24 A. To pick up the guns.

25 Q. Did you pick up more guns?

1 A. Yes.

2 Q. All right. And do you arrive at the cousin's house?

3 A. Yes.

4 Q. Anyone else arrive at the cousin's house?

5 A. Yes. Denny Moe.

6 Q. Okay. So, Denny's Porter is now at the cousin's house?

7 A. Yes.

8 Q. Along with you and Mr. McGee?

9 A. Yes.

10 Q. And the cousin?

11 A. Right. Two other guys.

12 Q. Do you know -- oh, two other guys?

13 A. Yeah. It was two other -- it was his cousins, but I don't  
14 know their names.

15 Q. Do you remember their street name even?

16 A. Outer Drive and Gilchrist.

17 Q. I meant the cousins' street names. Not the name of the  
18 streets.

19 A. Oh, no, no, no.

20 Q. Did you know the cousins' street names?

21 A. No.

22 Q. All right. Are there in fact -- are -- the firearms from  
23 the robbery the day or two before, are they still at the  
24 cousin's house?

25 A. No.

1 Q. Okay. If you -- do you know why not? Does anyone say why  
2 not?

3 A. No, I don't know why not.

4 Q. Okay. The -- everyone I assume leaves from the cousin's  
5 house?

6 A. Yes.

7 Q. Okay.

8 A. I left -- we all left. I hopped in the car with Denny  
9 Moe, and Stir and his two cousins left together.

10 Q. All right. So, you and Denny Moe go in one vehicle?

11 A. Yes.

12 Q. And Stir and his cousins go in a separate vehicle?

13 A. Yes.

14 Q. Where are they going, if you know?

15 A. Supposedly to go get the guns, because they wasn't at that  
16 house.

17 Q. And do you know did they say where the guns were supposed  
18 to be at that point?

19 A. At his cousin's mother's house.

20 Q. Okay. So, they go to get more guns?

21 A. Yes.

22 Q. Where do you and Dennis Porter go?

23 A. We go to the store and wait.

24 Q. Okay. Which store?

25 A. On Lyndon and Schaefer.

1 Q. Is that a liquor store?

2 A. Yes.

3 Q. Across from the storage facility where you end up meeting  
4 shortly thereafter?

5 A. Yes.

6 Q. All right. Does Stir, does Mr. McGee arrive at the liquor  
7 store as well?

8 A. Yeah. We waited and then he arrived.

9 Q. Who was with Mr. McGee at that point?

10 A. Still his two cousins.

11 Q. All right. Do you and Denny Moe go somewhere from the  
12 liquor store?

13 A. Yeah. We leave and go to the storage place.

14 Q. Okay. Do you pull inside the gate?

15 A. Yes.

16 Q. Okay. And at that point, as far as you know, Mr. McGee is  
17 behind you, correct?

18 A. Yes.

19 Q. Okay. And you were subsequently arrested at the storage  
20 facility?

21 A. Yes.

22 MR. FELLER: Your Honor, that's all the  
23 questions I have for Mr. Barkley at this time.

24 THE COURT: Cross-examination?

25 MR. BURGESS: Thank you, Your Honor.

1                   Is it all right if I do it from here, Your  
2 Honor?

3                   THE COURT: Sure.

4                   MR. BURGESS: Thank you.

5                   THE COURT: As long as we can hear you.

6                   MR. BURGESS: I'll try to speak up.

7                   THE COURT: You can move that microphone too  
8 that is at the table, but I don't think we will have a problem  
9 hearing you.

10                                   CROSS-EXAMINATION

11 BY MR. BURGESS:

12 Q. Mr. Barkley, the -- Mr. Feller asked you some questions  
13 about your prior criminal conduct. Is that correct? Do you  
14 remember those questions?

15 A. Yes.

16 Q. You said one prior conviction you were selling some  
17 marijuana in 2001?

18 A. Yes, sir.

19 Q. You were convicted of that?

20 A. Yes, sir.

21 Q. Okay. Is that the only time in your life you sold  
22 marijuana?

23 A. No.

24 Q. Okay. So, you've done that more than once?

25 A. Yes.

1 Q. How many times?

2 A. Plenty of times. I don't know exactly, but more than  
3 once.

4 Q. More than ten?

5 A. More than ten.

6 Q. More than 20?

7 A. More than 20.

8 Q. So a lot, right?

9 A. Yeah.

10 Q. Okay. And that's been going on throughout your adult  
11 life. Is that correct?

12 A. Not all of it.

13 Q. So, would it be fair to say that for a certain period of  
14 your life you've been a drug dealer? Is that correct?

15 A. Yes.

16 Q. Now, did you ever sell anything other than marijuana?

17 A. Yes.

18 Q. Cocaine?

19 A. Yes.

20 Q. Heroin?

21 A. No.

22 Q. Pills?

23 A. Yes.

24 Q. Any other kind of drugs?

25 A. No.

1 Q. What time period would you say you were selling those  
2 narcotics, from when to when?

3 A. From maybe the late 90's to 2009.

4 Q. Okay. So, ten-plus years, give or take a year; is that  
5 correct?

6 A. Yeah.

7 Q. How old are you, sir?

8 A. 32.

9 Q. 32.

10 So, for pretty much all of your adult life  
11 you've been a drug dealer?

12 A. No.

13 Q. In the late 90's you were how old?

14 A. 19, 20.

15 Q. Okay. Is it fair to say a definition of an adult is when  
16 someone turns 18? Is that correct?

17 A. Yes.

18 Q. So since you were 19 or 20, until this year or last year,  
19 you sold drugs, right?

20 A. I've also worked.

21 Q. I understand. I'm just talking about you dealing drugs.  
22 Which is illegal by the way, right?

23 A. Yes.

24 Q. You don't have a license to do that, do you?

25 A. No, I do not.



1 Q. Okay. So, pretty much during your whole adult life you  
2 have been a drug dealer, among other things. Is that correct?

3 A. Yes.

4 Q. You just only got caught once --

5 A. Yes.

6 Q. -- as a drug dealer?

7 A. Yes.

8 Q. In 1997 you said you had a home invasion.

9 You weren't caught for that; is that correct?

10 A. No, sir.

11 Q. Okay. You didn't turn yourself in, right?

12 A. No, sir.

13 Q. You got away with something. So, you didn't come forward  
14 and say you did something, correct?

15 A. No, sir.

16 Q. And in this particular case when you were involved in this  
17 robbery, if you hadn't gotten caught, would you have come  
18 forward?

19 A. If I hadn't got caught?

20 Q. Would you have come forward and turned yourself in in this  
21 case?

22 A. Are you talking about '97 or now?

23 Q. This case, currently.

24 We know in '97 you walked away from the home  
25 invasion.

1                   In this particular case, if you hadn't got  
2 caught on February 2nd, would you have turned yourself in?

3       A.   No.

4       Q.   Now, this home invasion in November 2009, you said you  
5 went to a house and stole some pounds of marijuana; is that  
6 correct?

7       A.   Yes.

8       Q.   Okay. Or helped somebody, right?

9       A.   Yes.

10      Q.   How many pounds of marijuana did you get?

11      A.   I believe it was 12.

12      Q.   12.

13                   You got 12 yourself?

14      A.   Yes.

15      Q.   What did you do with it?

16      A.   Sold it.

17      Q.   And that was about three or four months before this  
18 robbery in this case that brought you here today, right?

19      A.   Yes, sir.

20      Q.   So, at least on one prior occasion, sir, you've actually  
21 engaged in this type of activity where you bust in a house,  
22 steal some dope and then sell it later on, right?

23      A.   I didn't go in the house.

24      Q.   Well, helped somebody?

25      A.   Yes.

1 Q. And this was the plan in this case too, to steal some  
2 dope, turn around and sell it, right?

3 A. Yes, sir.

4 Q. Okay. And you know how to sell dope because you're a dope  
5 dealer, right?

6 A. I know how.

7 Q. You know how to sell dope, right?

8 A. Yes.

9 Q. You know how to package it, break it down, break it down  
10 into packages and mix it up and sell it?

11 A. No.

12 Q. You don't know how to do that?

13 A. No.

14 Q. Do you have somebody else do that for you?

15 A. No. I don't know how to mix it.

16 Q. You know how to package dope?

17 A. Yes.

18 Q. And you've packaged dope before, right?

19 A. Yes.

20 Q. Okay. In this case you were arrested February 2nd, 2010,  
21 right?

22 A. Yes, sir.

23 Q. Okay. And you were brought to court at some point after  
24 that, right?

25 A. Yes, sir.

1 Q. And you were -- you got an attorney, right?

2 A. Yes, sir.

3 Q. Now, you obviously had a number of discussions with your  
4 attorney about this case, right?

5 A. Yes, sir.

6 Q. And what would be in your best interest, how to resolve  
7 your case?

8 A. Yes, sir.

9 Q. And your attorney advised you --

10 MR. FELLER: Your Honor, objection as to  
11 anything his attorney advised him.

12 MR. BURGESS: He is on the stand, Your Honor.  
13 He waives his privilege.

14 MR. FELLER: What? I've never heard of such a  
15 thing, that you waive privilege by testifying.

16 MR. BURGESS: This is discussion -- well . . .

17 THE COURT: Mr. Burgess?

18 MR. BURGESS: I think that's actually -- well,  
19 first of all, it's not Mr. Feller's assertion. It is the  
20 witness's assertion.

21 MR. FELLER: It also calls for hearsay.

22 MR. BURGESS: I didn't ask him what his lawyer  
23 said. I just asked him if he had a discussion with his  
24 attorney.

25 THE COURT: You may ask him if he had a

1 discussion with his attorney, but not go into the discussion.

2 BY MR. BURGESS:

3 Q. You had a discussion with your attorney in this case; is  
4 that correct?

5 A. Yes, sir.

6 Q. Okay. And during that discussion you learned some things  
7 about the charge against you; is that correct?

8 A. Yes, sir.

9 Q. Okay. You learned that this charge carries 10 years  
10 mandatory minimum, right?

11 A. Yes, sir.

12 Q. Okay. You also learned that your guidelines in this case,  
13 if you went to trial, were anywhere from 16 to 20 years,  
14 right?

15 A. Yes, sir.

16 Q. Okay. And that's in prison, right?

17 A. Yes, sir.

18 Q. And that's not like you are getting out early or anything.  
19 That's 16 to 20 years. That's your understanding, right?

20 A. Yes, sir.

21 Q. And your understanding too is there is no way you can get  
22 under that 10 years without cooperating. That's your  
23 understanding, correct?

24 A. Yes, sir.

25 Q. Okay. The Government showed you the cooperation agreement

1 up on the screen. You know the cooperation agreement. You've  
2 gone over it. Right?

3 A. Yes, sir.

4 Q. You've gone through it with your attorney and you've read  
5 it yourself, right?

6 A. Yes, sir.

7 Q. And you understand every piece of it, don't you?

8 A. Yes, sir.

9 Q. Okay. Part of that agreement is that -- it says it's  
10 exclusively within the Government's discretion to determine  
11 whether Defendant has provided substantial assistance. Right?

12 A. Yes, sir.

13 Q. So, that is completely Mr. Feller and his office's call as  
14 to whether you get any kind of consideration for your  
15 cooperation, right?

16 A. To my knowledge, it's up to the judge.

17 Q. Do you see where it says in paragraph 2A?

18 A. Do you know what number that agreement was?

19 MR. FELLER: It's Exhibit 10. We will put it  
20 up.

21 MR. BURGESS: Exhibit 10. Thanks.

22 MR. FELLER: Page four.

23 MR. BURGESS: Page four. Thanks.

24 BY MR. BURGESS:

25 Q. The first paragraph there, sir, the first line.

1 MR. BURGESS: Thank you.

2 BY MR. BURGESS:

3 Q. Do you see where it says that it's "exclusively within the  
4 Government's discretion to determine whether Defendant has  
5 provided substantial assistance"?

6 A. Yes, sir.

7 Q. So -- and maybe I confused you, sir, and I apologize if I  
8 did. But it's up to the Court to determine the sentence, but  
9 it's up to the Government to determine whether or not the  
10 recommended guideline range gets lowered and whether or not  
11 you can get below that 10-year mandatory minimum.

12 Is that your understanding, sir?

13 A. Yes, sir.

14 Q. Okay. So, it's completely within the Government's  
15 discretion regarding the 10-year base, the 10-year mandatory  
16 minimum.

17 That's the only way you are going to get under  
18 that 10 years possibly, is if you cooperate with the  
19 Government. Is that correct? Is that your understanding?

20 A. Yes, sir.

21 Q. Okay. And you've been advised of that, correct? You  
22 understand that?

23 A. Yes, I understand.

24 Q. The only way you are saving yourself -- that you are going  
25 to get less than 10 years is if you are here testifying and

1 cooperating with the Government, right?

2 A. Uhm . . . yes, sir.

3 Q. Okay. And you've had some discussions -- you've had some  
4 discussions, and it's your understanding that by testifying  
5 here today you have been told that the Government will give  
6 you a 50 percent reduction in your guideline range. Is that  
7 correct?

8 A. No, sir.

9 MR. FELLER: Objection. You've been told. It  
10 calls for hearsay.

11 MR. BURGESS: I will rephrase.

12 BY MR. BURGESS:

13 Q. Is it your understanding, as you are testifying here  
14 today, that you will get a 50 percent reduction in your  
15 guideline range, as well as be below that 10 years for  
16 testifying here today? Is that your understanding, sir?

17 A. To my understanding, sir, it's all up to the judge. I can  
18 get life. I can get whatever the judge says, to my knowledge,  
19 to what I know.

20 Q. Let me ask you, sir, honestly -- and please you are  
21 telling this jury this honestly under oath. Do you honestly  
22 think you are looking at life here because you're testifying  
23 here today?

24 A. Honestly, no. I don't know. It's up to the judge how --

25 Q. I understand it is up to the judge. What I'm asking you,



1 sir, is your understanding of your situation.

2 Your understanding is you are going to get less  
3 time, significantly less time by being here today testifying  
4 under oath. Yes?

5 A. There's not a set . . .

6 Q. I'm not asking if it's set.

7 Your understanding is you believe in your mind  
8 that you are getting substantially less time for being here  
9 today as opposed to not being here today?

10 A. Yes, as long as I tell the truth.

11 Q. On February 2nd you were arrested. And when was the first  
12 time -- did you ever -- strike that. Excuse me.

13 Did you ever meet with agents in this case? Did  
14 you ever talk to the Government and its agents, ATF agents?

15 A. No.

16 Q. Ever?

17 A. Would you -- I don't understand the question.

18 Q. I will rephrase it.

19 After you were arrested February 2nd, any time  
20 after February 2nd, have you ever spoken to agents in this  
21 case? Have you ever sat down in a room with maybe Mr. Feller  
22 and one of the agents and your attorney and been asked  
23 questions?

24 A. Yes.

25 Q. When was the first time that happened, sir?

1 A. I don't --

2 Q. Approximately. Approximately. If you don't remember the  
3 date, that's okay, but approximately.

4 A. Maybe a few weeks after.

5 Q. After this happened, after February 2nd?

6 A. Yes.

7 Q. Okay. And where was that done?

8 A. I believe it was here.

9 Q. Here in the courthouse or . . .

10 A. In this building.

11 Q. Okay.

12 A. I had been to court a few times before.

13 Q. Okay. And you met in a room maybe in this building with  
14 your lawyer and an agent and Mr. Feller? Is that correct?

15 A. Yes, sir.

16 Q. And did they ask you questions?

17 A. Yes.

18 Q. Okay. And they had a file in front of them with some  
19 documents and stuff that they referred to when they asked you  
20 these questions, right?

21 A. I'm not sure.

22 Q. Did you see anything in front of them when they were  
23 asking you questions?

24 A. Oh. Yes.

25 Q. Okay. And did they appear to be referring to documents or

1 pieces of paper in front of them when they were asking you  
2 questions?

3 A. I can't really remember, sir.

4 Q. When the agents were asking you questions, from your  
5 perspective, did it sound like they had a lot of information  
6 already prior to talking to you?

7 A. They had information.

8 Q. Okay. And they were providing this information while they  
9 were asking you these questions. Is that correct, sir?

10 A. No, sir.

11 Q. You said they had information. Prior to talking to you,  
12 they had information?

13 A. Yeah, I guess they had their own observation of it, of  
14 what was going on. I don't know.

15 Q. And they had an observation, what you learned about from  
16 their questioning, correct?

17 A. Some of the things I already knew.

18 Q. Some of the things you knew. Some of the things you were  
19 told by the agents, correct?

20 A. I just heard them, yeah.

21 Q. You heard it at that time. So, you were informed at that  
22 time during these conversations about some of this information  
23 that you didn't have prior to having these conversations,  
24 correct?

25 A. Yes, sir.

1 Q. Now, if you know, sir, when you are in this room having  
2 these conversations -- excuse me. Let me back up a little  
3 bit.

4 How many times did you meet with the Government  
5 in this case, any agents or Mr. Feller? How many times?

6 A. Maybe once or twice.

7 Q. Was it in the same place both times?

8 A. Yes, I believe so.

9 Q. Okay. And was this meeting prearranged? Was it like your  
10 lawyer called you and said, you know, we are going to meet a  
11 at this place and then you met there?

12 A. No.

13 Q. It was what? It was done on the fly? It was done without  
14 an arrangement?

15 A. Well, actually I thought I was going to court for this,  
16 and I just . . .

17 Q. Okay. Both times you met you thought you were going to  
18 court?

19 A. I was still incarcerated.

20 Q. Okay. Now, you -- you were incarcerated at this time?

21 A. Yes.

22 Q. Or before you cooperated?

23 A. Yes.

24 Q. Okay. So, after you cooperated, after you talked to the  
25 Government and had these discussions with them, were you

1 released?

2 A. No, sir. I was still having a bond hearing.

3 Q. Okay. And -- but your bond hearing, when you finally got  
4 released, this was after you had started to cooperate with the  
5 Government, right?

6 A. Yes, sir.

7 Q. Okay. And when you had that bond hearing, did the  
8 Government oppose your bond or did they agree to release you?

9 A. What do you mean by did they oppose it?

10 Q. Did Mr. Feller come into court and argue that you  
11 shouldn't be released on bond or did he say we are okay with  
12 you being released on bond?

13 A. Oh. He argued it.

14 Q. He argued it?

15 A. Yes.

16 Q. Who let you out on bond?

17 A. The judge.

18 Q. Judge Tarnow?

19 A. Yes.

20 Q. When you were being questioned, did you notice in whatever  
21 room you were in -- I'm sorry. Let me back up a little bit.

22 Were you just taken to these rooms? You didn't  
23 actually voluntarily -- you were brought to these rooms. You  
24 were taken to these rooms because you were in custody?

25 A. No. I met with my attorney before.

1 Q. Okay. Where did you meet with your attorney before?

2 A. In a separate room.

3 Q. And then you went and spoke to the Government after that?

4 A. Yes, sir.

5 Q. If you remember, do you know if your conversations with  
6 the Government were video taped?

7 A. I'm not sure. I don't think it was video taped. I'm not  
8 sure.

9 Q. Did you see any recording devices anywhere when you were  
10 being questioned by the Government, when you were talking to  
11 the Government?

12 A. Uhm . . .

13 Q. If you remember?

14 A. I'm not sure now. I believe it was though. I didn't see  
15 a video camera -- no video camera though.

16 Q. Okay. So, basically you are not really sure whether the  
17 conversation was recorded or not. You just don't know at this  
18 point?

19 A. No. I believe it was recorded, but I don't -- I didn't  
20 see a video, like that video. I believe it was recorded.

21 Q. Why do you think it was recorded?

22 A. I don't know.

23 Q. Are you assuming it was recorded or did you actually see  
24 like a recording device somewhere?

25 A. Oh, yes. Yeah.

1 Q. You saw something?

2 A. Yes.

3 Q. Okay. Now, sir, this cooperation agreement that you  
4 entered into with the Government, that is something that the  
5 Government has asked you to do as far as help them with their  
6 case, correct?

7 A. I guess it's to help me with my case. I don't know. I'm  
8 not sure right now.

9 Q. I mean you are helping -- that's true too. You are  
10 helping yourself in the process, right?

11 A. Hopefully. I don't know. It's up to the judge.

12 Q. It is up to the judge ultimately. But in your mind today  
13 you are helping yourself, right?

14 A. I'm trying to.

15 Q. Now, you are here testifying on behalf of the Government,  
16 right?

17 A. I'm not sure of the process, who I am on the behalf of.

18 Q. Who called you here today?

19 A. The Government, I guess. I'm here to testify. I'm not  
20 sure who I am here on the behalf of.

21 Q. Did I call you to testify?

22 A. No, you didn't.

23 Q. Have we met before?

24 A. No, we haven't.

25 Q. So, you are here to provide assistance with the

1 Government's case today, right? That's your understanding,  
2 correct?

3 A. Yes, sir.

4 Q. The Government, Mr. Feller, asked you some questions about  
5 being over at Mr. McGee's house and he was looking at his  
6 neighbor. Do you remember that?

7 A. Yes, sir.

8 Q. Okay. That's information you provided to the Government,  
9 right, during these conversations, these one or two  
10 conversations that you had?

11 A. Yes, sir.

12 Q. Now, you said you didn't want to participate in that,  
13 right?

14 A. Yes, sir.

15 Q. Okay. Because you didn't think anything was there, right?  
16 You didn't think there would be a reason to go over there  
17 because you didn't think anything would be there, right?

18 A. Yes, sir.

19 Q. That was your main motivation, right, to not go over  
20 there, is because you didn't think you would get anything out  
21 of it, right?

22 A. I wasn't around. I couldn't get over there.

23 Q. According to your testimony, you said you didn't think  
24 there would be anything at the house; that's one of the  
25 reasons why you didn't go. Right?



1 A. Yes, sir.

2 Q. Now, this November robbery or home invasion when you stole  
3 the marijuana, you did that with someone else, right?

4 A. Yes, sir.

5 Q. Okay. That wasn't done with Mr. McGee, was it?

6 A. No, sir.

7 Q. Had you ever gone and done home invasions at other houses  
8 where you stole dope besides November 2009?

9 A. Yes, sir.

10 Q. How many times?

11 A. Just once in 1997.

12 Q. Okay. So, in 1997 you did a home invasion and stole some  
13 dope?

14 A. No. Some guns and some money.

15 Q. And then --

16 A. Clothes -- I mean shoes.

17 Q. And then you waited 12 years. And that was -- according  
18 to your testimony, that's when you committed your next home  
19 invasion 12 years later?

20 A. (No response.)

21 Q. Is that what you're saying?

22 A. Yes, sir.

23 Q. But you were all about doing another one four months later  
24 after you did the one in November 2009?

25 A. Yes, sir.

1 Q. You had no hesitation about it. It sounded good to you.  
2 Right?

3 A. Yes, sir.

4 Q. Because you figured you would get something out of it,  
5 right?

6 A. Yes, sir.

7 Q. I mean that's what motivates a lot of people. If they  
8 think they are going to get something out of something,  
9 they'll do certain things, right?

10 A. Yes, sir.

11 Q. Is that correct?

12 I mean you have no problem breaking the law if  
13 you can get something out of it, right?

14 A. (No response.)

15 Q. If there's some benefit to you, you have no problem  
16 breaking the law, right?

17 A. At that time? It's a hard thing, but that's the choice I  
18 made, yes, sir.

19 Q. As recent as this February, with that mindset, you had no  
20 problem breaking the law if you got something out of it.  
21 Right?

22 A. Yes, sir.

23 Q. You know what perjury is, right?

24 A. Yes, sir.

25 Q. Okay. That's breaking the law, right?

1 A. Yes, sir.

2 Q. Okay. So, this robbery that occurred at Mr. McGee's  
3 neighbor's house, you weren't present for it, right?

4 A. No, sir.

5 Q. You only heard about it, right?

6 A. Yes, sir.

7 (Juror sneezes.)

8 MR. BURGESS: Bless you.

9 BY MR. BURGESS:

10 Q. So, you are not a witness to it, nor did you see anything  
11 go down as relates to this robbery, right?

12 A. No. No, sir.

13 Q. And this was --

14 A. I'm a witness. I didn't see anything go down though.

15 Q. This is information that you again relayed during these  
16 conversations that you had back and forth with the Government,  
17 right?

18 A. No, sir.

19 Q. You didn't? You didn't tell the Government about that?

20 A. Oh, yeah. But they didn't tell me about that.

21 Q. Tell you about that robbery?

22 A. Yes.

23 Q. Do you know Denny Moe or Mr. Porter?

24 A. I don't know him. I know of him.

25 Q. Did you know him before February 2nd, 2010?

1 A. Yeah.

2 Q. You had met him before?

3 A. Yeah, I had met him before.

4 Q. What kind of guy is he?

5 A. I really don't know too much about him like that.

6 Q. Okay.

7 A. I know what he does sometimes, but I never hung out with  
8 him or . . .

9 Q. Is he a dangerous guy?

10 A. Yeah.

11 Q. I mean, is he a violent guy?

12 A. I mean, I found all that out later. I don't -- before  
13 then I didn't know that.

14 Q. You didn't know it on February 2nd?

15 A. I mean, I know he did robberies. He did one the day  
16 before. So, I know that's dangerous. He went in a house and  
17 burned it up. So, I know it's dangerous. I knew he's a  
18 dangerous guy, yes.

19 Q. You knew that on February 2nd that he was a dangerous guy?

20 A. Yes.

21 Q. Okay. And you didn't really know him on February 2nd?

22 A. I knew him.

23 Q. How many times had you met him before February 2nd, 2010?

24 A. A few times.

25 Q. Would you say you were friends?

1 A. No.

2 Q. Who did you know -- on February 2nd, 2010, who did you  
3 know the best? Mr. McGee?

4 A. Yes.

5 Q. And, yet, you went in the car with Mr. Porter, right?

6 A. Yes.

7 Q. Were you driving or the passenger?

8 A. Passenger.

9 Q. Mr. McGee -- you weren't with Mr. McGee that night. You  
10 were with Mr. Porter?

11 A. I was with Mr. McGee that night. Me and him --

12 Q. In vehicles. You were in Mr. Porter's vehicle, right?

13 A. That night, yes.

14 Q. That's all I'm talking about, February 2nd, 2010.

15 A. February 2nd I was with Mr. McGee also.

16 Q. You were in his vehicle earlier and then you went --

17 A. He was in mine.

18 Q. He was in your vehicle.

19 A. Yes, sir.

20 Q. And then you went to get in Mr. Porter's vehicle?

21 A. Yes, sir.

22 Q. Where did you leave your vehicle?

23 A. At the house we went to.

24 Q. Is that the cousin's house you were talking about?

25 A. Yes, sir.

1 Q. Did you have any problem getting in the car with  
2 Mr. Porter?

3 A. No.

4 Q. You didn't say anything to anybody about, hey, man, can I  
5 ride with you, or anything like that, did you?

6 A. Mr. Porter didn't have nobody in the car with him, and it  
7 was three of them in another car.

8 Q. I understand that. But you didn't voice any objection.  
9 You didn't say I really don't want to go with that guy?

10 A. No, I didn't say nothin'.

11 Q. So, you went voluntarily with Mr. Porter in the vehicle  
12 that he was driving, right?

13 A. Yes, sir.

14 Q. Now, the first assault rifle, I believe the second M16,  
15 you said that was at your house?

16 A. Yes, sir.

17 Q. Did you handle that gun?

18 A. I don't understand what you mean by did I handle it.

19 Q. Did you handle the gun? Did you physically handle it in  
20 your hands? Did you handle the gun?

21 A. I touched it when I put it up, yes.

22 Q. Where did you put it up?

23 A. My mother's basement.

24 Q. Is that where you were staying at the time?

25 A. No, sir.

1 Q. Where was that gun recovered from?

2 A. In my mother's basement.

3 Q. Okay. And you told somebody that's where the gun was?

4 A. Yes, sir.

5 Q. Did you tell somebody during the time you were talking to  
6 the Government?

7 A. Yes, sir.

8 Q. Now, you're a felon, right? You were a felon back in  
9 February of 2010?

10 A. Yes.

11 Q. Okay. And possessing a firearm, as a felon, that's a  
12 separate crime. You understand that?

13 A. Yes, sir.

14 Q. Okay. You were not charged with felon in possession of a  
15 firearm. Are you?

16 A. No, sir.

17 Q. Even though you did possess that assault rifle in your own  
18 home.

19 You understand you could be charged with felon  
20 in possession of a firearm, correct?

21 A. Yes, sir.

22 Q. And that's the Government's call to charge you, right? Is  
23 that your understanding?

24 A. I believe so.

25 Q. Okay. But they haven't charged you with it?

1 A. No, sir.

2 Q. Any other guns recovered at your mother's house?

3 A. No, sir.

4 Q. And the only thing we have to say that this gun was  
5 delivered to your house by Mr. McGee is you, right?

6 A. Yes, sir.

7 Q. Nobody else witnessed that?

8 A. No, sir. Well -- yeah. No, sir.

9 Q. Did Mr. McGee handle this gun when it was brought over to  
10 the house? Did he have it in his hands?

11 A. Yes, sir.

12 Q. Did you see the gun removed from your mother's house or  
13 no?

14 A. No, sir.

15 Q. On February 2nd, sir, you said that you were running late  
16 to the meeting at the coney island; is that correct?

17 A. Yes, sir.

18 Q. And you said you were doing something else according to  
19 your testimony.

20 What was that something else you were doing?

21 A. I was running late.

22 Q. You said you were doing something else according to your  
23 direct-examination.

24 What were you doing?

25 A. I was on my way there. I was just running late. It was



1 bad outside.

2 Q. Do you remember testifying that you said you were doing  
3 something else?

4 A. Yes.

5 Q. Do you remember saying it was bad outside; do you remember  
6 ever saying that before?

7 A. No, I didn't.

8 Q. Okay. But you said you were doing something else.

9 Is there a reason why you don't want to say what  
10 you were doing?

11 A. There's no reason.

12 Q. Okay. Now, you say you left the coney island -- you left  
13 your vehicle, and Mr. McGee went with you, right?

14 A. We left in the vehicle -- we all left in separate cars.

15 Q. Okay. And when you all left in separate cars, Mr. McGee  
16 was with you, right?

17 A. He was in his own -- he was in a separate car.

18 Q. So, he wasn't with you?

19 A. We was following each other.

20 Q. You went to his house?

21 A. Yes.

22 Q. Anybody else go with you?

23 A. No.

24 Q. Okay. So, as far as Mr. McGee removing this gun, the gun  
25 that was shown to you -- I believe it looked like an AK.

1 According -- did anybody else see that out there?

2 A. They saw it when we got to his cousin's house.

3 Q. When you say "they," who are you talking about?

4 A. Denny Moe and two of his cousins.

5 Q. Okay. Now, all of these crimes you are talking about  
6 having committed, these robbery crimes you are talking about,  
7 you've never done anything with Mr. McGee before, have you?

8 A. No, sir.

9 Q. Okay. Mr. McGee's house that you first went to, do you  
10 know where that is? Do you know the location of it?

11 A. The house we first went to?

12 Q. Yes.

13 A. When we left the coney island?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. Do you know the address?

17 A. No.

18 Q. Could you find it again if you wanted to?

19 A. Yes.

20 Q. Okay. You could help the Government find it if they asked  
21 you to find it for them, correct?

22 A. Uhm . . .

23 Q. You could point out the house to the Government, right, if  
24 you went down the street?

25 A. Yes. They know where -- yes.

1 Q. They know where it is?

2 A. Yes.

3 Q. Did you tell them where it was? I mean, you may not have  
4 known the address. But did you tell them where it was or did  
5 they already know that?

6 A. What do you mean did I tell them where it was?

7 Q. Did you give them information where this house was or did  
8 they already have that information?

9 A. Yes.

10 Q. Which one? Did they have the information before or did  
11 you provide it to them?

12 A. You're talking about the house we went to when we left the  
13 coney island?

14 Q. Yes. The first house.

15 A. Yeah, I told them.

16 Q. You told the Government?

17 A. Yes.

18 Q. Okay. And the second house you went to, do you know where  
19 that was?

20 A. Yes.

21 Q. Okay. Did you tell the Government about that house?

22 A. Yes.

23 Q. Give them a description at least where it was and the  
24 cross streets, that kind of thing?

25 A. Yes.

1 Q. You said you don't know the cousins, the name of the  
2 cousins. Is that correct?

3 A. Not both of them that was with him.

4 Q. Did they come with you?

5 A. Come with me where?

6 Q. Did they -- when you left the cousin's house and you went  
7 to the storage place, did they come with you?

8 A. Excuse me. No. They were with Stir.

9 Q. So, they were in a different car, but they went in the  
10 same direction as you, right?

11 A. When we left, yes.

12 Q. Okay. That was a red SUV, right?

13 A. Yes.

14 Q. And you weren't in that vehicle?

15 A. No.

16 Q. Nor did you go in that vehicle that evening, did you?

17 A. No.

18 Q. Now, you turned in to this storage place with Mr. Porter.  
19 And Mr. McGee's vehicle was behind you?

20 A. Yes.

21 Q. Directly behind you or farther back?

22 A. I'm not sure. There might have been a car or two behind  
23 us, but . . .

24 Q. Were you really paying that much attention to it?

25 A. In a way I was, but he kept going and turned around and

1      came back.

2      Q.   He kept going, turned around and came back?

3      A.   Yes.

4      Q.   And he took off at some point?

5      A.   Afterwards, yes.

6      Q.   Did you see the vehicle take off?

7      A.   I seen it come back.

8      Q.   Come back?

9      A.   Yes.

10     Q.   When you say come back, did it go in the storage place or  
11     just drive down the street?

12     A.   I'm not sure if it went in or turned.   He was on the phone  
13     with Denny Moe and the agent, and they was directing him back  
14     in or telling him to pull in, but he said he couldn't; there  
15     was a truck blocking him or something.

16     Q.   Did you see a truck blocking him?

17     A.   No.   I couldn't see.   I was in the storage place already.

18     Q.   You were inside?

19     A.   Yes.

20     Q.   As far as what you are talking about, turning around, you  
21     are just getting that as information.   You aren't actually  
22     viewing that.   Is that correct?

23     A.   When we came out of the store and turned into the storage  
24     facility, he was behind us.

25     Q.   Okay.   But after that, you didn't see him again?

1 A. After he kept straight. And that's when Denny Moe called  
2 him and asked him why he didn't turn in and --

3 Q. Let me stop you right there.

4 When Denny Moe called him, you are in the  
5 storage facility?

6 A. We are not in there yet. We are just turning in. We are  
7 at the gate.

8 Q. Okay. When you are turning in, the car keeps going. The  
9 SUV keeps going, right?

10 A. Right.

11 Q. Okay. Then you say it turns around. Did you view it,  
12 sir? Did you see it turn around?

13 A. I seen it come right back towards the storage facility.

14 Q. Okay. And then after that, did you go in the storage  
15 facility?

16 A. Yes.

17 Q. Okay. Did you see the vehicle again after it went in the  
18 storage facility or no?

19 A. No.

20 Q. After it turned around, you have no idea where it went?

21 A. No. It turned around. By the time it turned around, we  
22 was inside the storage facility already.

23 Q. Right. And then after that --

24 A. He was on the phone. And we seen the truck come right  
25 back past with the blinker on like it was coming in, but it

1 never came in.

2 Q. Okay. So, they never came into the storage facility.  
3 They turned around and took off. You don't know where the  
4 vehicle went. Right?

5 A. (No response.)

6 Q. Correct?

7 A. Correct.

8 Q. All right. Now, just so I'm clear, sir, it's up to the  
9 judge -- is this your understanding. It's up to the judge  
10 what your ultimate sentence is. But isn't the only way you  
11 are going to get below 10 years is if you are here  
12 cooperating?

13 A. Yes.

14 Q. And that's at the discretion of the Government, right?

15 A. Yes.

16 Q. All of these other people who supposedly saw Mr. McGee,  
17 his cousins and stuff, do you know where they are right now?

18 A. No.

19 Q. Do you see them in court anywhere?

20 A. No.

21 Q. Okay. So, as far as this story about the guns and what  
22 was brought and everything, all we have is your testimony,  
23 correct?

24 A. Yes.

25 MR. BURGESS: One second.

1 Thank you, Your Honor.

2 THE COURT: Redirect?

3 MR. FELLER: Briefly, Your Honor.

4 REDIRECT-EXAMINATION

5 BY MR. FELLER:

6 Q. All right, Mr. McGee, just very briefly, just so there's  
7 no confusion and we get the sequence of events right. You  
8 leave the coney island in your own vehicle by yourself,  
9 correct?

10 A. Yes, sir.

11 Q. You meet at Stir's, Mr. McGee's house, and Mr. McGee has  
12 driven to his house by himself?

13 A. Yes.

14 Q. Mr. McGee goes inside the house. You do not.

15 A. I went in for a second, and we both walked out.

16 Q. You both went in for a second and walked out. Mr. McGee  
17 walks out with a firearm?

18 A. Yes.

19 Q. Okay. Mr. McGee then gets into your car?

20 A. Yes.

21 Q. You and Mr. McGee drive together to his cousin's house?

22 A. Yes, sir.

23 Q. Dennis Porter meets you as well at the cousin's house?

24 A. Yes, sir.

25 Q. The reason everyone has assembled at the cousin's house is



1 because that's where the firearms from the robbery of the day  
2 before are supposed to be?

3 A. Yes, sir.

4 Q. Okay. Those firearms -- and everybody else needed  
5 firearms as well, correct?

6 A. Yes, sir.

7 Q. Those firearms have been moved?

8 A. Yes, sir.

9 Q. You and Mr. Porter in your vehicle -- I'm sorry. Is it  
10 your vehicle or Mr. Porter's vehicle?

11 A. Mr. Porter's.

12 Q. You and Mr. Porter proceed to a liquor store across the  
13 street from the storage facility, correct?

14 A. Yes, sir, because the guns wasn't there, and they was  
15 supposed to be going --

16 Q. You and Mr. Porter proceed to the storage facility -- to  
17 the liquor store across from the storage area?

18 A. Yes, sir.

19 Q. To your understanding, Mr. McGee and his cousins proceed  
20 to one of the cousin's mother's house where the guns have  
21 since been moved?

22 A. Yes, sir.

23 Q. Mr. McGee and the cousins are in the red Mercury SUV?

24 A. Yes, sir.

25 Q. They proceed to meet you at the liquor store?

1 A. Yes.

2 Q. So, now you have got -- well, the agent and Nop, the  
3 confidential informant, are in one vehicle?

4 A. Yes, sir.

5 Q. You and Mr. Porter are in a second vehicle?

6 A. Yes.

7 Q. Mr. McGee and his cousins are in a third vehicle, a  
8 Mercury Mariner?

9 A. Yes.

10 Q. The agent's vehicle proceeds first into the storage  
11 facility, correct?

12 A. Yes.

13 Q. You and Mr. Porter follow him into the storage facility?

14 A. Yes, sir.

15 Q. The Mercury Mariner is behind you when you go inside,  
16 correct?

17 A. Yes. They are --

18 Q. It's coming from the liquor store to the storage facility?

19 A. Yes.

20 Q. At that point, you hear a telephone conversation between  
21 Mr. Porter and Mr. McGee, correct?

22 A. Yes.

23 Q. Okay. And it's your understanding -- did you hear the  
24 portion of the conversation -- did you hear a portion of the  
25 conversation involving Mr. McGee attempting to type in the

1 code to get into the storage facility?

2 A. Yes, sir. He was given -- talking to Denny Moe and the  
3 agent. And the agent was saying let me talk to him so I can  
4 give him a code --

5 MR. BURGESS: Just a minute, Your Honor. Just  
6 for clarification -- is he hearing Mr. McGee's voice or just  
7 Mr. Porter's house, just for clarification?

8 BY MR. FELLER:

9 Q. You are hearing one side of the telephone conversation?

10 A. Yes.

11 Q. So, you hear the agent or Denny Moe talk to who you  
12 understand to be Mr. McGee?

13 A. Yes, sir.

14 Q. And you hear a conversation which you understand to be  
15 Mr. McGee give him a code to come into the storage facility,  
16 correct?

17 A. Yes. The agent gave him a code.

18 Q. You also hear the conversation about a truck being in the  
19 way preventing Mr. McGee from getting into the facility?

20 A. Yes, sir.

21 Q. And then there is an arrest?

22 A. Yes, sir.

23 Q. Can you describe what happens when the arrest takes place?

24 A. They was in the storage facility, and all of a sudden just  
25 lights and shots went off or whatever. I don't know what it

1 was, but --

2 Q. Flash bang?

3 A. Flash bang, they went off. And they came out in the  
4 storage facility and we was arrested.

5 Q. That flash bang grenade would have been seen from the  
6 entrance of the storage facility as well?

7 MR. BURGESS: Objection. Speculation.

8 THE COURT: If you know.

9 BY MR. FELLER:

10 Q. If you know. Based on your observation of the flash bang  
11 grenade, do you think you would have been able to see it if  
12 you were at the entrance of the storage facility?

13 A. It was pretty loud, yes.

14 Q. Okay. Let's just get clear on the statements you have  
15 made to law enforcement over time.

16 Your first statement was actually the day you  
17 were arrested, correct?

18 A. Yes.

19 Q. You recall making a statement the very day you were  
20 arrested?

21 A. Yes.

22 Q. February 2nd of 2010?

23 A. Yes.

24 Q. I wasn't there, correct?

25 A. No, sir.

1 Q. All right. It was just the various agents and officers at  
2 that point. The prosecutor's office wasn't involved at that  
3 point. Right?

4 A. No, sir.

5 Q. Okay. In that statement did you tell the agents that your  
6 boy Stir had recruited you to participate in that robbery?

7 A. Yes, sir.

8 Q. Okay. Your first statement was the day of your arrest,  
9 February 2nd, 2010.

10 Your second statement, of which I was present,  
11 as well as two agents, was February 22nd, 2010?

12 A. Yes, sir.

13 Q. Correct. So, that was about -- does that sound right?

14 A. Yes, sir.

15 Q. About three weeks later?

16 A. Yes, sir.

17 MR. FELLER: Okay. Can we cull up Exhibit 9,  
18 which is your plea agreement. And can we go to page nine.

19 BY MR. FELLER:

20 Q. What's the date on your plea agreement, if you can see it?

21 It is in the bottom left-hand corner there.

22 A. Is that 3/17.

23 Q. Right. So, the Government submitted it to you on February  
24 24th, 2010. That's when I signed it, correct?

25 A. Right.

1 Q. And you actually didn't go over it with your lawyer and  
2 sign it until March 17th, 2010, correct?

3 A. Yeah. That was about a week before, yep.

4 Q. Okay. So, certainly on the day you were arrested,  
5 February 2nd, 2010, when you first told law enforcement Mr.  
6 McGee had recruited you, you didn't have any agreement with  
7 the Government at that point?

8 A. No, sir.

9 Q. Okay. How about on February 22nd, 2010 when you made a  
10 more detailed statement to me and to law enforcement, did you  
11 have an agreement in place at that point?

12 A. No, sir.

13 Q. Okay. And, again, on February 22nd, 2010, did you tell  
14 law enforcement that Stir had recruited you to participate in  
15 this robbery?

16 A. Yes, sir.

17 Q. Okay. And did you tell them about the robbery the day  
18 before on February 1st when you got the machine guns?

19 A. Yes, sir.

20 MR. FELLER: Your Honor, I would offer ATF  
21 reports 9 and 16 into evidence as Exhibits 17 and 18, as prior  
22 consistent statements of Mr. Barkley.

23 THE COURT: Any objection?

24 MR. BURGESS: I would object. I don't think  
25 those are relevant. They are bolstering anyway. I object,

1 Your Honor.

2 MR. FELLER: Your Honor, these are --

3 THE COURT: I think they are admissible.

4 MR. FELLER: Thank you, Your Honor.

5 THE COURT: And they are in rebuttal of your  
6 cross-examination.

7 MR. FELLER: Thank you, Your Honor. That's all  
8 I have.

9 *(Government Exhibits 17 and 18 were admitted*  
10 *into evidence.)*

11 THE COURT: Mr. Burgess.

12 MR. BURGESS: Thank you, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. BURGESS:

15 Q. When was the first time you came to court; do you know?  
16 Was it the day of your arrest, the day after?

17 A. I believe the day after.

18 Q. Okay.

19 A. The next -- yeah, the next morning.

20 Q. The next morning. Okay.

21 And when you were brought to court, you got a  
22 lawyer, right?

23 A. Yes, sir.

24 Q. Okay. You were -- were you assigned counsel?

25 A. Yes, sir.

1 Q. Okay. And when you were assigned counsel, your attorney  
2 spoke to you on a couple different occasions; is that correct?

3 A. Yes, sir.

4 Q. And it's your understanding that if you were going to  
5 cooperate in this case, that you should do it early on,  
6 correct?

7 A. No, sir. We didn't have -- we didn't -- no.

8 Q. You didn't have that discussion with your lawyer?

9 A. No, sir. We just went --

10 MR. FELLER: Your Honor, I'm going to object to  
11 discussions with his attorney.

12 MR. BURGESS: Your Honor --

13 MR. FELLER: Mr. Burgess is certainly free to  
14 ask about this Defendant's understanding. He's not free to go  
15 into conversations with the attorney.

16 MR. BURGESS: It's not Mr. Feller's assertion,  
17 first of all.

18 MR. FELLER: It's hearsay and it's still  
19 privileged.

20 MR. BURGESS: It's not privileged. It is a  
21 state of mind. It is an exception.

22 It is not hearsay, Your Honor. It goes to state  
23 of mind, this exception. I'm asking questions regarding his  
24 mindset when he's making these statements. That is the reason  
25 I asked the question. It's just background, state of mind.



1 THE COURT: First of all, this is very similar  
2 to the ruling I made before. You may ask the question did you  
3 have discussions with your attorney. You may not go into what  
4 those discussions -- or, what the attorney's advice was.

5 Do you want to rephrase your question?

6 MR. BURGESS: I will, sir.

7 BY MR. BURGESS:

8 Q. Sir, is it your understanding that if you were going to  
9 cooperate in this case, it would be more beneficial to you if  
10 you did it early on as opposed to wait? Is that your  
11 understanding?

12 A. No, that is not what we talked about my first meeting with  
13 my lawyer.

14 Q. Any discussions you had with your lawyer before February  
15 22nd, is it your understanding that if you cooperated early  
16 on, it would be more beneficial to you?

17 A. Yes, sir.

18 Q. You said you spoke to the agents without Mr. Feller  
19 present on February 2nd.

20 Where was that done?

21 A. At the station.

22 Q. At the station?

23 A. Mm-hmm.

24 Q. Which station?

25 A. They took me to the police station.

1 Q. Were you in an interrogation room?

2 A. Yeah.

3 Q. Do you know if there was recording equipment on that date?

4 A. I believe so. I'm not sure. I believe so though.

5 MR. BURGESS: Nothing further.

6 MR. FELLER: Nothing else from this witness,

7 Your Honor.

8 THE COURT: Any questions from the jurors?

9 You may step down. Thank you.

10 You may call your next witness.

11 MR. FELLER: Your Honor, the Government calls --

12 do we want to take a break or no?

13 THE COURT: I don't think so. Your next witness  
14 is short as I understand it.

15 MR. FELLER: Shortish.

16 Your Honor, the Government calls --

17 THE COURT: Are you asking for a break? I  
18 certainly don't want --

19 MR. FELLER: No. It's 10:15. I just thought it  
20 was a convenient time and then we could finish and we could --  
21 yeah.

22 THE COURT: Yeah. We can finish with the  
23 witness and then we can do the discussions we have to do to  
24 get ready for the closing argument.

25 MR. FELLER: Very good, Your Honor.

1                   The Government calls ATF task force Agent Jeff  
2 Pacholski.

3                   THE COURT: Is this your last witness?

4                   MR. FELLER: It is, Your Honor.

5                   THE COURT: Okay. Raise your right hand.

6                   JEFFREY PACHOLSKI, GOVERNMENT'S WITNESS, SWORN.

7                   THE COURT: Please be seated.

8                   Go on.

9                   DIRECT-EXAMINATION

10                  BY MR. FELLER:

11                  Q. Sir, would you state your full name, and for the court  
12 reporter please spell your last name for the record?

13                  A. Jeffrey Pacholski. My last name is P-A-C-H-O-L-S-K-I.

14                  Q. And what do you do, sir?

15                  A. I'm a Detroit Police Sergeant.

16                  Q. And how long have you been employed by the Detroit Police  
17 Department?

18                  A. About 21 1/2 years.

19                  Q. Are you assigned to any special squads or task forces?

20                  A. Yes.

21                  Q. And what are those?

22                  A. I'm federally deputized and assigned to the Detroit ATF  
23 Task Force.

24                  Q. Okay. And how long have you been on the Detroit ATF Task  
25 Force?

1 A. Almost two years now.

2 Q. And in that role are you in fact the case agent  
3 responsible for Mr. Porter and Mr. Barkley and Mr. McGee's --  
4 the investigation in that case?

5 A. Yes.

6 Q. Were you involved in any capacity on February 2nd, the  
7 date of Mr. Porter's and Mr. Barkley's arrest?

8 A. Yes.

9 Q. And what was your role at the time of the arrest?

10 A. I was a part of a surveillance team, as well as prepared  
11 to be a part of an arrest team if the need arose.

12 Q. Okay. And where were you physically located; inside the  
13 storage facility or outside?

14 A. Outside.

15 Q. Okay. And outside of the facility did you witness a red  
16 Mercury Mariner?

17 A. Yes.

18 Q. And what was it doing when you first saw it?

19 A. When I first saw the red Mariner, it was traveling  
20 southbound on Schaefer, away from the storage facility.

21 Q. Okay. Did you pursue it?

22 A. Not at that time.

23 Q. Okay. Well, what did you do?

24 A. Maintained surveillance of it.

25 Q. Okay. And where did it go after -- while you were

1 maintaining surveillance?

2 A. It went eastbound on Lyndon Street and into a grocery  
3 store parking lot located on the southeast corner of Lyndon  
4 and Schaefer.

5 Q. Okay. Did you attempt to effect an arrest at that point?

6 A. No, sir.

7 Q. Why not?

8 A. The signal to make an arrest had not been given at that  
9 point.

10 Q. Okay. What did you do then?

11 A. Maintained surveillance of the vehicle.

12 Q. Okay. What happened next?

13 A. The vehicle pulled out of the grocery store parking lot.  
14 It went westbound on Lyndon and then northbound on Schaefer.

15 Q. Okay. Then what?

16 A. I followed it, and it continued northbound on Schaefer and  
17 made a left turn, which would have been westbound on the first  
18 side street that ran behind the storage facility. I don't  
19 know the name of that street.

20 Q. Okay. What next?

21 A. Maintained surveillance of the vehicle. The take-down  
22 signal was given to arrest the persons in the Mariner as well  
23 as the persons within the storage facility.

24 As we passed the street that dead-ended into the  
25 storage facility, the flash bangs went off and lit up the sky.

1 The vehicle that Mr. McGee was believed to be in, the Mariner,  
2 went down a side street northbound and parked.

3 Q. Okay. What happened then?

4 A. I continued past the vehicle because the Michigan State  
5 Police arrest team, marked cars, were en route to effect a  
6 traffic stop on the Mariner. I went around the block to the  
7 next street north and saw the Mariner again.

8 Q. Okay. So, your job was to continue with the surveillance.  
9 It wasn't actually to effect the arrest?

10 A. It would have been to effect the arrest at the appropriate  
11 time. That time was not the appropriate time.

12 Q. Okay. What happened when you next saw the Mariner? Was  
13 anybody in it?

14 A. When we first saw the Mariner, we were unsure if it was  
15 occupied at that time. I had never seen anybody get out of  
16 it. And we attempted to make contact at that point with the  
17 marked Michigan State Police cars as well as the part of the  
18 arrest team in undercover cars and plain clothes.

19 Q. Okay. What happened?

20 A. Nobody responded. We checked the vehicle and it was  
21 unoccupied.

22 Q. Okay. It was empty?

23 A. Yes.

24 Q. All right. What did you do next to try and figure out  
25 where these folks went?

1 A. It was snowing that evening and there was fresh snow on  
2 the ground, and we could see footprints leading away from the  
3 Mariner, a set which lead to a house and a set which we found  
4 later led away from the house.

5 Q. All right. Did you attempt to -- well, did you have any  
6 idea who was inside the vehicle?

7 A. No. We just -- two black males that were given out. No  
8 names. No identifications.

9 Q. Okay. Did you have a street name for one of the  
10 individuals?

11 A. Not at that point, no.

12 Q. Did you at some point learn from Agent Nether that at  
13 least one of the people was known as Stir?

14 A. Yes.

15 Q. Okay. What did you do to attempt to locate Stir -- well,  
16 first of all, did you identify Stir by a name and then to  
17 locate him?

18 A. That would have been later on, not that same night, at the  
19 proffer with Mr. Barkley as to --

20 Q. Well, let's go through it chronologically. What, if  
21 anything else, did you do as part of the investigation that  
22 evening?

23 A. That evening we actually surrounded the house that one of  
24 the footprints went to. I eventually made contact with the  
25 occupants, and we searched the house and found nobody we were

1 looking for in there. It was just occupied by a female.

2 Q. Okay. Did the female give you any information about  
3 whether anyone had come to her house or not that night?

4 A. No. She said nobody had come to her house.

5 Q. Anything else that subsequently happened?

6 A. We looked for the individuals. We were following the  
7 footprints and basically lost the footprints when it hit Grand  
8 River, which is a busy street. It was free of snow, so we  
9 couldn't follow the footprints anymore.

10 Q. Okay. What was the next step in your investigation to try  
11 to identify Stir and the other individual?

12 A. That would be Mr. Barkley.

13 Q. Okay. Mr. Howard Barkley?

14 A. Yes.

15 Q. Did Mr. Barkley give you any information that would be  
16 relevant to identifying Stir?

17 A. Yes.

18 Q. What information did he give?

19 A. He had given me a street where he knew Stir to live, as  
20 well as the location of who he identified as Stir's  
21 grandmother, who had recently passed and lived on Ward, and  
22 descriptively gave me basically the street she lived between.  
23 It was across from a school, and described the house to me.

24 Q. Okay. Did you then go to that location?

25 A. Yes.



1 Q. Okay. And what happened?

2 A. I could not readily identify the house. So, I wrote every  
3 single address down on that block, which it's not a very long  
4 block. And I started running houses and actually came up with  
5 a person who had recently -- an older female that was  
6 deceased; checked further into her address and found Alistair  
7 McGee.

8 Q. Okay. And that was the basis of your determination that  
9 Alistair McGee was in fact the person you were looking for?

10 A. It made sense. The street name of Stir; Alistair, Stir.  
11 I got a picture of Alistair McGee off a computer and showed it  
12 to Special Agent Nether who he positively identified. And I  
13 saw the video as well and I could tell that it was Alistair  
14 McGee.

15 Q. Okay. So, now you knew who Stir was.

16 What did you do to actually locate him and  
17 arrest him?

18 A. We enlisted the assistance of the U.S. marshals.

19 Q. Okay. And what, if you know, did they do to try to locate  
20 Mr. McGee?

21 A. We had obtained a new phone number for Mr. McGee from an  
22 ATF informant and provided that to the marshals, and we began  
23 tracking the cellular phones.

24 Q. And were you able to track the cellular phones to a  
25 specific location?

1 A. Yes.

2 Q. And where was that?

3 A. 11714 Rosemont in Detroit.

4 Q. And who was the registered owner or renter of that?

5 A. We learned about a person by the name of Errol Shaw was  
6 the person that lived at that location.

7 Q. Okay. Did you initiate surveillance on that location?

8 A. Yes.

9 Q. Did you observe Mr. McGee at that location?

10 A. Mr. McGee was observed by a Deputy U.S. Marshal step on to  
11 the front porch while on his cell phone that we were tracking  
12 and then go back into the house. And we then basically  
13 assaulted the house and arrested Mr. McGee in the basement.

14 Q. Okay. And you anticipated my next question. Based on  
15 being inside the house, were you able to determine where in  
16 the house Mr. McGee was staying?

17 A. He was in the basement.

18 Q. Okay. Other than Mr. McGee himself, did you locate  
19 anything else in the basement?

20 A. Yes. There was an assault weapon.

21 Q. Okay. Let me ask you to take a look at Exhibit 6.

22 A. Okay.

23 Q. Is Exhibit 6 the weapon you found in the basement?

24 A. Yes.

25 Q. Was it in a box like that when you found it?

1 A. No. It was lying on the floor behind the couch, and the  
2 magazine was in the weapon, and there were live rounds in the  
3 magazine weapon.

4 Q. Okay. Now, as the case agent responsible for the  
5 investigation, you are aware that there were a number of  
6 firearms found in this case, correct?

7 A. Yes.

8 Q. Okay. So, this is Mr. -- this is the firearm found when  
9 Mr. McGee was arrested, correct?

10 A. Yes.

11 Q. If we go to Exhibit 7 we have -- we can just scroll  
12 through these. We have four firearms found at Mr. Porter's  
13 house?

14 MR. BURGESS: Mother.

15 BY MR. FELLER:

16 Q. Mr. Porter's mother's house. I'm sorry.

17 Is that correct?

18 A. Yes.

19 Q. And you heard Mr. Jury's testimony that at least two of  
20 these firearms were consistent with Mr. Porter's description  
21 of the burglary that had taken place the day before, correct?

22 A. They were -- that part about the burglary, I didn't  
23 understand that part.

24 Q. You have heard --

25 THE COURT: Let me stop.

1                   We don't need witnesses commenting on other  
2 witnesses' testimony. And now it's cumulative.

3                   MR. FELLER: Very good, Your Honor.

4 BY MR. FELLER:

5 Q. In fact, did Mr. Porter make a statement to you in this  
6 case?

7 A. Yes.

8 Q. All right. And did he in fact direct agents to where  
9 these firearms were located in his mother's house following  
10 his arrest?

11 A. I actually directed the agents to the firearms that were  
12 in Porter's house. I was the one that interviewed Porter.

13 Q. Based on information Porter had provided to you?

14 A. Yes.

15 Q. So, there was no doubt in your mind as to who these  
16 firearms belonged to?

17 A. That's correct.

18 Q. Okay. And again was the same thing true with Mr. McGee;  
19 the firearm found in Mr. Low's (sic) basement as to Mr. McGee?

20 A. Correct.

21 Q. Okay. And if we could go to Exhibit 8.

22                   This is the firearm that was in Mr. Barkley's  
23 mother's house, I believe?

24 A. Yes.

25 Q. And, again, did Mr. Barkley direct you to where that

1 firearm was during his statement?

2 A. Yes.

3 Q. All right. So, is it fair to say that with respect to all  
4 six firearms in this case, did you have any doubt as to who  
5 they belonged to?

6 A. No, I did not.

7 Q. Okay. So, with respect to these six firearms, did you  
8 undertake to have any sort of ballistic testing,  
9 fingerprinting or any of that done with respect to these  
10 firearms?

11 A. The firearms were processed as evidence, and at some point  
12 ballistics are done. I don't know if the results are done or  
13 back, but fingerprinting was not done.

14 Q. Okay. Why was fingerprinting not done?

15 A. At that point the rifle -- it had been some time since the  
16 crime, and my experience has been you rarely get fingerprints  
17 off a firearm --

18 MR. BURGESS: Objection. Relevance.

19 THE COURT: Sustained.

20 MR. FELLER: Your Honor, that's all the  
21 questions I have for Agent Pacholski.

22 THE COURT: Cross-examination?

23 MR. BURGESS: Thank you, Your Honor.

24

25

## CROSS-EXAMINATION

BY MR. BURGESS:

Q. Pacholski?

A. Pacholski.

Q. Pacholski.

Is it Agent Or sergeant?

A. I'm a Detroit Police Sergeant, and my title with the ATF is Task Force Officer.

Q. Agent Pacholski -- or, Officer Pacholski, you said you were working surveillance at the -- on February 2nd outside of the storage facility; is that correct?

A. Yes, but not just outside of the storage facility. It was a mobile surveillance following --

Q. Okay. I don't mean stationary.

So, you were in a vehicle, correct?

A. Yes.

Q. But you were stationary initially when you were doing surveillance, right?

A. Yes.

Q. And this vehicle, what kind of vehicle is it?

A. It's a -- it was a 2010 Ford Explorer.

Q. Okay. This is not a marked police car, is it?

A. No, it is not.

Q. It's an undercover vehicle, right?

A. Yes.

1 Q. Okay. So, you want to make sure it doesn't look anything  
2 like a police vehicle; is that correct?

3 A. Correct.

4 Q. When you were doing surveillance were you with a partner  
5 or alone?

6 A. I was with a partner.

7 Q. Okay. Just one?

8 A. Yes.

9 Q. So, there were two people in the Explorer doing  
10 surveillance?

11 A. Yes.

12 Q. Now, when you were doing surveillance, where were you  
13 located in relation to the front of the storage facility?

14 A. I was never in stationary surveillance at the storage  
15 facility. I was actually arriving in the area.

16 Q. Okay. So, you never had fixed surveillance set up. You  
17 actually never stopped moving during this whole . . .

18 A. No. There were times I would stopping moving, I was  
19 stationary. But I was not specifically assigned to just watch  
20 the storage facility.

21 Q. Okay. Were you at the front of the storage facility when  
22 the vehicles in this case pulled in?

23 A. No, I was not.

24 Q. Where were you located at that point?

25 A. I was making my way to that area.

1                   It was rough traveling that night even with the  
2   four-wheel drive, and I arrived on to Schaefer as the Mariner  
3   was coming at me, away from the storage facility.

4   Q.   So that by the time -- when you arrived at the front of  
5   the storage facility, the Mariner is exiting the area?

6   A.   I never made it to the front of the storage facility.   I  
7   was on Schaefer and Lyndon when I saw the Mariner leaving away  
8   from the storage facility.

9   Q.   By the time you see the Mariner, it's already driving away  
10   from the storage facility?

11   A.   Yes.

12   Q.   Okay.   And you follow the Mariner, right?

13   A.   I did not get behind it and follow it.   I didn't have to.  
14   I just turned into the parking lot of the grocery store after  
15   he did.

16   Q.   Okay.   So, you weren't actively like tailing, so-to-speak,  
17   the Mariner.   Is that correct?

18   A.   That's correct.

19   Q.   And do you maintain consistent -- a consistent view of the  
20   Mariner during the time you are sort of following it?

21   A.   I did up until the point I bypassed it when I went north  
22   on the side street and I circled around.   So, it was out of my  
23   sight for 30 seconds or so, relatively drive around the block.

24   Q.   And the side street, that is not the side street that the  
25   storage facility is on.   Is that correct?



1 A. No. The storage facility is on Schaefer and occupies  
2 Schaefer and Lyndon.

3 Q. But in response to my question, the storage facility is  
4 not on that side street, correct?

5 A. No.

6 Q. And by the time you actually -- when you view the Mariner,  
7 do you approach it at that point? When you regain sight of  
8 the Mariner, you approach it at that point, correct?

9 A. Eventually, yes.

10 Q. Do you lose sight of it again or do you . . .

11 A. No.

12 Q. As you are approaching it you maintain a visual of the  
13 Mariner?

14 A. Yes.

15 Q. And when he you arrive at the Mariner there's nothing in  
16 the vehicle?

17 A. Correct.

18 Q. Do you go in the vehicle?

19 A. Not at that point, no.

20 Q. Do you look in the vehicle?

21 A. No, I did not.

22 Q. Was the vehicle inventoried?

23 A. Yes.

24 Q. Okay. Did you inventory it or did someone else?

25 A. I believe myself and Officer Jerold Blanding.

1                   *(Interjection by court reporter.)*

2       A.   Blanding is B-L-A-N-D-I-N-G.   His first name is Jerold,  
3       J-E-R-O-L-D.

4       BY MR. BURGESS:

5       Q.   When this vehicle is inventoried, there's no weapons  
6       recovered?

7       A.   That's correct.

8       Q.   No evidence of any kind recovered or logged as relates to  
9       this vehicle, correct?

10      A.   Correct.

11      Q.   And you obviously didn't see anybody exit that vehicle or  
12      leave the scene.   You saw footprints?

13      A.   That's correct.

14      Q.   And as far as you mentioned something about the Michigan  
15      State Police, they never got close enough to the area to be of  
16      assistance to you.   Is that correct?

17      A.   No.   They are the ones who made the initial contact with  
18      the vehicle, because they were the marked units.

19      Q.   Okay.   When you say "initial contact," you mean when it  
20      was parked?

21      A.   Yes.

22      Q.   Okay.   So, they weren't making a traffic stop, per se.  
23      They just arrived at an empty vehicle parked on a side street?

24      A.   No.   It was treated as though it was a traffic  
25      stop/vehicle.

1 Q. In order for the jury to be clear, even though it was  
2 treated as a traffic stop, the vehicle was never occupied when  
3 MSP arrived at it. Is that correct?

4 A. We learned that after the traffic stop of the vehicle.

5 Q. That would be correct, that the vehicle was never occupied  
6 when MSP effectuated their traffic stop? Correct?

7 A. Would you rephrase that, please?

8 Q. Absolutely.

9 Your understanding is that MSP arrived and  
10 effectuated what you referred to as a traffic stop, but there  
11 were no occupants of the vehicle at that time?

12 A. That's correct.

13 Q. Okay. And MSP, to your understanding, did not report  
14 seeing anybody exit that vehicle or anything to that effect;  
15 is that correct?

16 A. No, they did not.

17 Q. Now, you said you followed these footprints to a house.

18 How far was the house from this vehicle?

19 A. It was -- the vehicle was parked right in front of that  
20 house.

21 Q. So, right on that same street.

22 Just walking on the same side of the street or  
23 across the street?

24 A. Same side of the street.

25 Q. Okay. And did you see the -- did these footprints -- you

1     said you went in -- you knocked on the door and you wanted to  
2     see if they were there, obviously, the people who the  
3     footprints belonged to, right?

4     A.   Actually, the Michigan State Police broadcast over the  
5     loud speaker for the occupants of the house to come to the  
6     door.

7     Q.   Okay.  And they complied obviously, right?

8     A.   Eventually, yes.

9     Q.   Did you search that house?

10    A.   I did not.

11    Q.   Do you know if anybody did?

12    A.   Yes.

13    Q.   Was anything recovered in that house?

14    A.   No.  It was only a female home.

15    Q.   Okay.  So, no weapons were recovered in that house, right?

16    A.   That's correct.

17    Q.   And the footprints, they went away from this area again?

18    A.   Well, there was a set of footprints that we believed to  
19     lead to the house, but after sorting them out, the footprints  
20     eventually actually led across the street and through the  
21     yards, and from there unknown.

22    Q.   Okay.  Now, this is -- these footprints -- strike that.

23                    You said you heard the flash bang go off.  Is  
24     that correct?

25    A.   I heard them and saw the flash.  There was more than one.

1 Q. There was more than one.

2 And those are loud booms, right?

3 A. Yes.

4 Q. Do they resemble gunshots?

5 A. I don't think so.

6 Q. Not personally. But do you think someone could mistake  
7 them for gunshots possibly?

8 A. It's more of an explosion as opposed to a gunshot.

9 Q. Startling though?

10 A. That's what they are for, yes.

11 Q. Okay. And how many were there?

12 A. I want to say four to six of them that all went off at the  
13 same time.

14 Q. So, four to six continuous really loud booms in the area?

15 A. Just one giant explosion.

16 Q. It was one giant. Even though there were four to six,  
17 they all went off at once?

18 A. They were all wired together, yes.

19 Q. So, it wasn't like consecutive. It was just one loud  
20 boom?

21 A. Yes.

22 Q. Now, you followed these footprints until they got to Grand  
23 River.

24 How far from this house to Grand River in feet;  
25 how far is that?

1 A. I did not follow the footprints.

2 Q. Do you know how far that is approximately in feet?

3 A. No. It's probably a mile, I'm guessing.

4 Q. Okay.

5 A. You know, and I misspoke. It was not Grand River. It was  
6 Puritan Street, not Grand River. Grand River is behind us.

7 Q. Puritan is a main road though?

8 A. It's -- it's -- I wouldn't consider it a main road, no,  
9 but it's heavily traveled. It's not like a side street.

10 Q. Okay. There was no snow on the ground when you got to  
11 Puritan. That's when you --

12 A. No, there was.

13 Q. But you didn't see the tracks anymore?

14 A. I never saw the tracks.

15 Q. Oh, you never saw --

16 A. I was informed they lost the tracks at Puritan, which was  
17 a couple streets out.

18 Q. Now, you mentioned a proffer with Mr. Barkley.

19 A proffer -- just for purposes of the jury, a  
20 proffer is when you talk to somebody to get information from  
21 them basically, right?

22 A. Yes.

23 Q. And was this -- the first time Mr. Barkley gave you that  
24 information, was that February 2nd?

25 A. The information -- what information?

1 Q. Was that the first time you spoke with Mr. Barkley, was  
2 February 2nd?

3 A. Yes.

4 Q. Okay. Had you already generated any paperwork or  
5 documentation on February 2nd?

6 A. There were reports done in this case, yes. I don't recall  
7 if I authored them or not.

8 Q. But you had access to them. You could reference them if  
9 you chose to do so?

10 A. Yes.

11 Q. And you could reference them if you chose to do so on  
12 February 2nd, 2010 when you spoke first to Mr. Barkley?

13 A. Yes. I didn't speak to Mr. Barkley on February 2nd.

14 Q. When did you first speak to Mr. Barkley?

15 A. It would have been February 22nd, I believe.

16 Q. And that's when Mr. Feller was present?

17 A. That was at the proffer.

18 Q. Where was that done?

19 A. Here in the U.S. Marshal holding area.

20 Q. In the detention back in one of the rooms there?

21 A. Yes.

22 Q. Was that proffer, was that video taped or audio taped?

23 A. It was audio taped.

24 Q. Now, you said based on that information you received on  
25 February 22nd, you went to a residence or you -- I guess you

1 picked a bunch of -- you wrote down a bunch of addresses. And  
2 then you went to one of the residences after you found out  
3 that Mr. McGee's grandmother had resided there or owned it at  
4 some point; did you go to that residence?

5 A. I took the information from the proffer and went to Ward  
6 Street.

7 Q. Okay. And when you went on Ward Street, did you search  
8 the house?

9 A. No.

10 Q. Anything preventing you from obtaining a warrant to search  
11 the house?

12 A. Probable cause.

13 Q. Did you seek a warrant in that case?

14 A. No.

15 Q. You never made an attempt to even ask for a warrant?

16 A. As I recall, the house was vacant and for sale, the one  
17 that ended up being the right house.

18 Q. So, a vacant property where nobody lives, it would  
19 probably be easier to get a warrant for a vacant property,  
20 right, than an occupied one in, your 20 years of experience,  
21 Officer?

22 A. You need probable cause for either.

23 Q. You don't make that probable cause determination. That's  
24 a magistrate's job, right?

25 A. Correct.



1 Q. And you did not even request a warrant for this house,  
2 correct?

3 A. I had no probable cause to request a warrant.

4 Q. So, that's a no?

5 A. Absolutely not.

6 Q. And, again, probable cause is not determined by you, but  
7 by a magistrate, correct?

8 A. No, I really don't know how to answer that question. I  
9 would say no.

10 Q. Do you get to sign your own warrants or does a judge have  
11 to sign it?

12 A. A judge has to sign it.

13 Q. Okay. So, that house wasn't searched.

14 The other residence you went to, you said  
15 Mr. McGee -- you found him in the basement of that residence?

16 A. Yes.

17 Q. But you first saw him outside the residence?

18 A. I did not see him, but he was seen outside the  
19 residence -- stepped out of the residence on to the front  
20 porch.

21 Q. I think your testimony was you assaulted the house.

22 How many people were present when you assaulted  
23 the house?

24 A. I'm going to guess at least ten, plus a helicopter.

25 Q. Okay. And you said that there was somebody else. There

1 was another owner or another renter that occupied that  
2 residence?

3 A. Yes.

4 Q. Was it a renter or an owner?

5 A. I don't know.

6 Q. Okay. But there was definitely someone other than  
7 Mr. McGee that actually occupied that residence, correct?

8 A. Yes.

9 Q. And you found that out before you actually went in there,  
10 right?

11 A. No.

12 Q. You found that out after you went in there?

13 A. Yes.

14 Q. How did you -- how did you know to go in there if you  
15 didn't even know who -- how did you know to go in there to  
16 look for Mr. McGee?

17 A. The cell phone led us to -- Mr. McGee's cell phone -- what  
18 we believed to be Mr. McGee's cell phone led to us that  
19 location.

20 Q. Okay. Did you have a warrant to go in that house?

21 A. No.

22 Q. You just went in without a warrant?

23 A. Mr. Shaw let us in.

24 Q. Okay. So, there was a person there. Mr. Shaw or  
25 Ms. Shaw?

1 A. Mr. Errol Shaw is his name.

2 Q. Mr. Errol Shaw.

3 That is how you found out who resided there?

4 A. Yes. He said he resided there.

5 Q. Did Mr. Shaw say that anybody else resided there?

6 A. No.

7 Q. Did you find out if anybody else resided there?

8 A. No.

9 Q. Did Mr. Shaw give you permission to search the house?

10 A. Yes.

11 Q. And you searched the whole house?

12 A. Yes.

13 Q. When you recovered the -- the one weapon you recovered,  
14 that was recovered in the basement? Is that where you said  
15 Mr. McGee was apprehended?

16 A. Yes. He was in the basement.

17 Q. Were you the one that apprehended him or was it somebody  
18 else that did that?

19 A. It was a group effort. I did not physically place  
20 handcuffs on him.

21 Q. Were you present when you -- did you view Mr. McGee in the  
22 basement, you personally?

23 A. Yes.

24 Q. And who else was present during that -- when the first  
25 contact was made with Mr. McGee, who else was present?

1 A. They were a combination of Detroit police officers and  
2 U.S. Marshals that work a task force apprehending fugitives.  
3 I don't know exactly.

4 Q. When Mr. McGee was arrested in this case, you said you  
5 found that there was a -- the gun was on the couch?

6 A. It was behind the couch.

7 Q. Behind the couch?

8 A. Yes.

9 Q. When you say behind, like what do you mean; like  
10 underneath or was it propped up or how was it?

11 A. It was lying on the floor behind -- against the wall  
12 behind the couch. The back of the couch would be up against  
13 the wall. The gun would be lying on the floor.

14 Q. Was the couch up against the wall?

15 A. I don't know. I didn't initially find the gun.

16 Q. Okay. Do you know personally if the gun -- if the couch  
17 had to be moved to locate the weapon?

18 A. I don't know.

19 Q. When you -- did you ever view the basement?

20 A. Yes.

21 Q. When you viewed the basement, where was the gun?

22 A. It was behind the couch on the floor.

23 Q. Okay. Did the couch look like it was angled out at all?

24 A. Yes. The couch was angled out.

25 Q. Okay. Did it appear to have been moved?

1 A. It was away from the wall, but I don't know if it was that  
2 way or -- it was not flat up against the wall.

3 Q. Okay. So, just from your own personal knowledge, if that  
4 couch had been against the wall, you would not have been able  
5 to physically see the gun just out in the open, correct?

6 A. Correct.

7 Q. And you said that gun was not preserved for fingerprints?

8 A. It was not.

9 Q. Was there any reason it couldn't have been?

10 A. No. It could have been.

11 Q. Nothing preventing you from fingerprinting that gun,  
12 right?

13 A. Correct.

14 Q. Did you ever try to get --

15 From speaking to Mr. Barkley, did you ever try  
16 to get any warrants, any search warrants to search any other  
17 properties that Mr. McGee may have resided at? Did you ever  
18 try to do that?

19 A. No.

20 Q. And all these guns that Mr. Feller keeps flashing on the  
21 screen, the only gun attributable to Mr. McGee in this case,  
22 according to you, is the one that was found in the house  
23 behind the couch where he was in. Is that correct?

24 A. That's not correct.

25 Q. Is that the only gun found in proximity to Mr. McGee?

1 A. Yes.

2 Q. And you have no -- other than speaking to Mr. Barkley, you  
3 have no personal knowledge that Mr. McGee ever handled that  
4 weapon, right?

5 A. That's correct.

6 Q. And we have no fingerprints to verify that he ever handled  
7 that weapon?

8 A. Correct.

9 Q. How many times was Mr. Barkley debriefed or was there a  
10 proffer done?

11 A. Just the once.

12 Q. Okay. And he was spoken to on February 2nd by other  
13 agents?

14 A. Yes. He was interviewed on February 2nd after his arrest.

15 Q. And on February 22nd when you spoke with Mr. Barkley, did  
16 you have your case file with you?

17 A. No.

18 Q. Did you have any notes with you at all?

19 A. No.

20 Q. Did you have knowledge of this case after working it for  
21 at least probably about a month?

22 A. Yes.

23 Q. You had a working knowledge of the case?

24 A. Yes.

25 Q. In your mind?

1 A. Yes.

2 Q. When you were speaking to Mr. McGee, right?

3 A. Speaking to Mr. Barkley?

4 Q. When you were speaking to Mr. Barkley. I apologize.

5 A. Yes.

6 MR. BURGESS: Nothing further.

7 THE COURT: The Government?

8 REDIRECT-EXAMINATION

9 BY MR. FELLER:

10 Q. Mr. Shaw gave you permission to search his house, correct?

11 A. Yes.

12 Q. Did Mr. Shaw also provide a statement to you or to other  
13 law enforcement agents?

14 A. Yes. To Curtis Bronson.

15 Q. Did Mr. Shaw in his statement, if you know, was he asked  
16 about whether Mr. McGee was staying in his house?

17 A. Yes.

18 Q. Was he asked about where in the house Mr. McGee was  
19 staying?

20 A. Yes.

21 Q. Was he asked about ownership of the firearm that was found  
22 in the basement?

23 A. Yes.

24 Q. Based on where the firearm was found, based on Mr. Shaw's  
25 statement, did you see any need to obtain fingerprints on the

1 firearm?

2 A. No.

3 MR. FELLER: Okay. Your Honor, in connection  
4 with this witness's testimony, we have the reports of  
5 Mr. Barkley's February 2nd and February 22nd statements.  
6 Mr. Burgess has correctly pointed out that those statements  
7 were recorded.

8 The Government would offer the recordings of  
9 Mr. Barkley's statements into evidence as well.

10 THE COURT: Any objection?

11 MR. BURGESS: No, Your Honor.

12 THE COURT: They are received.

13 MR. FELLER: Thank you, Your Honor. That will  
14 be Exhibits 19 and 20.

15 *(Government Exhibits 19 and 20 were admitted*  
16 *into evidence.)*

17 THE COURT: Are you done?

18 MR. FELLER: I am, Your Honor. Government  
19 rests.

20 MR. BURGESS: Nothing further, Your Honor.

21 THE COURT: You may step down. Thank you.

22 JUROR NO. 7: Your Honor, I have a question.

23 THE COURT: I'm sorry. The one time I didn't  
24 ask.

25 JUROR NO. 7: I would like to know --



1 THE COURT: No, no. Write it down.

2 Sidebar, gentlemen.

3 *(Bench Conference held out of the hearing of the*  
4 *jury, between the Court and counsel, on the*  
5 *record as follows:)*

6 THE COURT: There's no objection.

7 *(End of Bench conference.)*

8 THE COURT: All right. Here's the question.

9 Whose name is the Mariner registered in, if you  
10 know?

11 A. A gentleman by the name of Torrey Smith, T-O-R-R-E-Y.

12 THE COURT: Any follow-ups?

13 MR. FELLER: Not from the Government, Your  
14 Honor.

15 MR. BURGESS: No, Your Honor.

16 THE COURT: Any follow-ups from the jurors?

17 You may step down. Thank you.

18 A. Thank you.

19 THE COURT: Now, did I hear you say you rested?

20 MR. FELLER: The Government rests, Your Honor,  
21 yes.

22 THE COURT: All right. That means this is a  
23 great time for a break.

24 It's about ten minutes to 11. So, at about ten  
25 minutes after 11 we'll come back and proceed with the trial.

1 Remember, don't talk about the case. It's not  
2 over until it's over.

3 So, all rise for the jury.

4 We'll see you in about 20 minutes.

5 *(Jury leaves the courtroom at 10:52 a.m.)*

6 THE COURT: Anything anyone wants to put another  
7 record?

8 MR. FELLER: No, Your Honor. Just with respect  
9 to those last two exhibits, 19 and 20, we will have to  
10 physically retrieve them from my office.

11 THE COURT: Are they on a computer so the  
12 computer you bring back will play them?

13 MR. FELLER: Agent Pacholski is telling me he  
14 may actually have them with him. So, that will be convenient.  
15 But yes, they are on discs, and the jury will --

16 THE COURT: Anything else?

17 MR. FELLER: Not from the Government, Your  
18 Honor.

19 THE COURT: Mr. Burgess?

20 MR. BURGESS: Your Honor, I had spoke with my  
21 client before. I don't believe that -- I just want to inquire  
22 through him as to whether or not he is choosing to testify in  
23 this case. I don't believe he is, but I just wanted to  
24 inquire on the record.

25 THE COURT: You may.

1 MR. BURGESS: Thank you, Your Honor.

2 Mr. McGee, the Government has rested their case  
3 at this point, and I'm basically asking you -- you --  
4 obviously now you have a right to remain silent as well as an  
5 absolute right to testify.

6 Are you choosing to testify or are you choosing  
7 to remain silent at this time?

8 MR. McGEE: I will remain silent.

9 THE COURT: I'm sorry?

10 MR. McGEE: I'm going to remain silent.

11 THE COURT: All right. You have that  
12 constitutional right. I'm sure your attorney has consulted  
13 with you. And now you've made your decision.

14 I was a little troubled by the absence of  
15 Mr. Epstein, the witness's attorney, but I don't think that's  
16 a problem anymore.

17 MR. FELLER: And, Your Honor, candidly, now that  
18 you mention it, that is my oversight, and I . . .

19 THE COURT: Well, he was here yesterday.

20 All right. So that I understand, we are ready  
21 for closing arguments?

22 MR. FELLER: The Government stands ready, Judge.

23 MR. BURGESS: The Defense is ready, Your Honor.

24 THE COURT: All right. And I want the  
25 instructions -- the jurors' copies of the instructions on the

1 chairs once you pull that page out, and distributed. And then  
2 we will go right after closing arguments to the jury  
3 instructions. And we will provide lunch to the jurors.

4 MR. FELLER: And us?

5 THE COURT: Only the jury. The order will say  
6 lunch for the jury. And if he's here, he will probably get  
7 one.

8 MR. FELLER: Thank you, Your Honor.

9 What time should we be back?

10 THE COURT: In 15 minutes now.

11 MR. FELLER: 15 minutes. Thank you, Judge.

12 *(Recess taken.)*

13 THE COURT: All rise for the jury, please.

14 *(Jury enters the courtroom at 11:16 a.m.).*

15 THE COURT: Everybody is in their place. You  
16 may be seated.

17 The prosecution has rested. The Defense has  
18 rested. And we are ready for closing arguments.

19 Remember what I told you before. This is not  
20 evidence. This is the attorneys' view of what the evidence  
21 shows. The ultimate decision as to what the evidence shows is  
22 collective yours as jurors.

23 There is no time limit on the closing arguments,  
24 but this being a short case, it would probably be two or three  
25 days.

1 Is that about right, counsel?

2 MR. FELLER: I'm hoping for two or three  
3 minutes, Judge, but . . .

4 THE COURT: All right. You may begin.

5 MR. BURGESS: I would ask that those comments be  
6 stricken.

7 MR. FELLER: Are we going to be okay if I stand  
8 now?

9 *(Mr. Feller is addressing the jury.)*

10 THE COURT: You are not suggesting you are going  
11 to sit down?

12 Can you see?

13 MR. FELLER: No. They want to see the . . .

14 JUROR NO. 7: It's fine.

15 THE COURT: Okay. She said it's fine.

16 MR. FELLER: Okay. Sorry. I'll try to move  
17 around a little bit.

18 On your chairs when you came in are copies of  
19 jury instructions. When Mr. Burgess and I are through, the  
20 Judge is going to go all through I think 53 pages of those  
21 with you. I want to highlight just a couple that I think are  
22 the most significant or might be the most significant in your  
23 deliberations.

24 If we could have 16, page 18. And it will be up  
25 on the screen, but hopefully your page numbers should

1 correspond. And if we could highlight (2) (A) and (B) .

2 There you go.

3 All right. So, you will remember when we  
4 started out, we talked about what the elements of the offense  
5 are, what the recipe is, or if you decide to acquit, what that  
6 would involve. And there are only two, and they are very  
7 straightforward.

8 First, that two or more persons conspired, or  
9 agreed, to commit the crime of possessing with intent to  
10 distribute controlled substances.

11 So, there was an agreement among two or more  
12 people to commit that crime. And the Government submits that  
13 agreement was to do that through a robbery.

14 Now, what's an agreement? Again, you will have  
15 another instruction in there. The Government doesn't have to  
16 prove that it's formal or that it's written or that it's even  
17 spoken. It's just simple common sense; did this group of  
18 individuals agree to get together to do something illegal.

19 And here, of course, they did. And how do you  
20 know that? Well, you know that because you have it on video.

21 If we could have Exhibit 5, 2, please. This is  
22 already at the coney island right before they are supposed to  
23 go to the robbery. This is going to be Agent Nether  
24 describing again how much the quantity of cocaine is that they  
25 are supposed to steal.

1                   And on the left there you see Mr. McGee standing  
2                   right there as Agent Nether is speaking.

3                   *(Exhibit 5, Clip 2 played in open court.)*

4                   MR. FELLER: Again, we heard a lot about how  
5                   Mr. McGee was walking around at the coney island.

6                   Well, he really wasn't walking around very much.  
7                   First, when we start at the coney island, he is at a table on  
8                   the right side of the image. And the remainder, he walks  
9                   over, gets a cup of water and stands to Agent Nether's left.

10                  So, was there an agreement? Of course, these  
11                  folks knew exactly what they were doing. You have Mr. McGee  
12                  on video listening to Agent Nether talking about how he's the  
13                  courier. He's picking up six kilograms of bricks, or whatever  
14                  the other euphemisms are, of cocaine. There should be 30 left  
15                  at the stash house when the robbery takes place.

16                  Let's go back to the jury instructions, page 18.

17                  And, second, that the Defendant knowingly and  
18                  voluntarily joined the conspiracy. That's your second.

19                  So, one, that you have an agreement among a  
20                  group of people -- again, it doesn't need to be written; it  
21                  doesn't need to be spoken; just an understanding -- and,  
22                  second, that the Defendant voluntarily chose to participate.  
23                  And, again, that too you will have on video from the coney  
24                  island.

25                  Could we have Exhibit 5, Clip 1.

1                   Again, this is near the beginning. We'll see  
2                   Mr. McGee at a table on the right side.

3                   *(Exhibit 5, Clip 1 played in open court.)*

4                   MR. FELLER: And again later, Exhibit 5, Clip 3.

5                   *(Exhibit 5, Clip 3 played in open court.)*

6                   MR. FELLER: In this clip you have evidence both  
7                   of the agreement, "when we come in with choppers, with masks,"  
8                   and obviously of Mr. McGee's participation in it.

9                   Now, you're all here today and we heard three  
10                  witnesses. We heard about a whole lot of stuff that happened  
11                  after the coney island. They split up. Mr. Barkley and McGee  
12                  go to McGee's house. Mr. McGee picks up a gun. They go to  
13                  the cousin's house. Mr. Barkley comes back with Mr. Porter to  
14                  the liquor store. Mr. McGee and his cousin go to get more  
15                  guns. Mr. Barkley and Mr. Porter's people get into the  
16                  storage lot. Mr. McGee and his cousin don't. They end up  
17                  fleeing on foot.

18                  The Judge in the beginning gave you an example  
19                  of direct versus circumstantial evidence. You remember that.  
20                  Circumstantial evidence is if somebody comes in in a raincoat  
21                  and they're all wet. Right? What does that mean? Well, it's  
22                  raining outside.

23                  Circumstantial evidence, if it's snowing outside  
24                  and you see a vehicle that you have been following and there's  
25                  nobody in it and there's footprints in the snow leading from



1 it, it probably tells you somebody got away.

2           There's a chase by the marshals, by ATF over a  
3 couple weeks. Not a chase. They track -- they identify  
4 Mr. McGee and they track him down to the home of a man named  
5 Errol Shaw. McGee isn't at his house. He's not at his sister  
6 house's. He's not at his mother's house. He is hiding out in  
7 a guy's basement with a firearm, Exhibit 6.

8           But my point is if we --

9           You know what, can we get Exhibit 16, page 38.

10           One of the instructions you will hear is about  
11 flight; that when a Defendant -- this is page 38 -- that when  
12 a Defendant flees the scene of a crime, that is something that  
13 you can consider as indicative of guilt for the offense.

14           But my point in all of that is the charge here  
15 is conspiracy; that there's an agreement and that the  
16 Defendant voluntarily joined it.

17           Everything that happened after that, I think  
18 going to your house and picking up a gun, fleeing from the  
19 scene, all of that is indicative of guilt certainly. And  
20 that's why we went through all of the testimony here today.  
21 But none of it really mattered, because the crime is completed  
22 if you have an agreement and if somebody voluntarily joins it.  
23 And, again, all of the clips -- and you have the entire  
24 video -- from what happened at the coney island at that point,  
25 the crime was completed.

1                   Now, I don't like to predict what a jury is  
2 going to hear from a Defense lawyer. But my guess is, based  
3 on the couple days we've sat through, you are going to hear  
4 that Mr. Porter, Denny Moe, is the one who set this up.

5                   And you know what. That's probably absolutely  
6 right. If we could have Exhibit 1 Clip 1.

7                   *(Exhibit 1, Clip 1 played in open court.)*

8                   MR. FELLER: Mr. Porter was also the one who was  
9 responsible for arranging to get these drugs sold. Exhibit 1,  
10 Clip 2, please.

11                   *(Exhibit 1, Clip 2 played in open court.)*

12                   MR. FELLER: Can we go back to page 22 of the  
13 instructions.

14                   As you will hear from Judge Tarnow when he goes  
15 through the complete instructions, the fact that there were  
16 other people involved, the fact that other some of those  
17 people may have been more or less involved, the fact that this  
18 particular Defendant wasn't at that first meeting with the  
19 undercover agent, none of that makes any difference  
20 whatsoever.

21                   There is no question that Dennis Porter, Denny  
22 Moe, is a really bad guy. And he will be dealt with in a  
23 separate proceeding.

24                   For your purposes, the question is whether this  
25 Defendant, Alistair McGee, whether there was an agreement to

1 participate in a robbery and whether this Defendant  
2 voluntarily joined in it. And based on the video that you saw  
3 from the coney island, I don't think there can be any doubt,  
4 reasonable, possible or otherwise, as to that.

5 Now, if you believe Mr. Barkley, who testified  
6 here today -- and I would urge you -- you will get this book  
7 back with you. And it wasn't up on the screen. Exhibit 17 in  
8 that book is the statement that Mr. Barkley gave to law  
9 enforcement on the day he was arrested. Right? He is  
10 arrested at the storage facility. Goes to law enforcement.  
11 He says you've got me. Here's what happened.

12 There were no prosecutors. There was no deals.  
13 There was no anything. There was a guy confessing to the  
14 offense.

15 Exhibit 18, again, February 22nd -- if you look  
16 at his plea agreement, there was no deal for almost another  
17 month -- there is a full description of Mr. Barkley, of how he  
18 was recruited to commit this offense by Mr. McGee, of the gun  
19 robbery that took place the day before.

20 All of this is -- again, you have the reports.  
21 You will also have the actual recordings, if you want to hear  
22 them, of Mr. Barkley's interviews that took place on those  
23 dates.

24 But if you believe Mr. Barkley, this Defendant's  
25 role was actually, very, very substantial. Mr. Porter may be

1 the kingpin, but it was Mr. McGee who arranged to have  
2 Mr. Barkley participate in the robbery, who picked up a gun  
3 from his own house, and who in fact set up the robbery of his  
4 neighbor to steal the guns the day before.

5 Speaking of firearms, we have again -- if we can  
6 go to Exhibit 6.

7 Mr. McGee several weeks later, after this  
8 robbery goes bad, after his co-conspirators are arrested, he's  
9 not living in his house. He's not staying with family. He's  
10 staying with some guy, Errol Shaw, in his basement. Agents  
11 have to track him down using a cellular telephone. He's  
12 living in the basement, and in the basement is a firearm.

13 Now, Mr. Barkley tells you that this is the  
14 firearm that he had seen previously with Mr. McGee. We know  
15 from the agents that there are other firearms from the robbery  
16 the day before.

17 If we can have Exhibit 7.

18 And we can just go through them. These are  
19 found at Mr. Porter's house. These are consistent with the  
20 report of the robbery. This is consistent with Mr. Barkley's  
21 testimony of being told about the robbery -- and if we could  
22 have Exhibit 8 -- and of being asked by Mr. McGee to put up  
23 one of those guns.

24 Now, if we could have Exhibit 16, page 52.

25 You are going to have a two-page verdict form in

1 this case. Page one is as to the single-count charge,  
2 conspiracy to possess with intent to distribute controlled  
3 substance; guilty or not guilty.

4 And then if we can go to page two. If you  
5 determine that Mr. McGee is guilty of that offense, you are  
6 also asked to determine the quantity involved.

7 So, the quantity here is the quantity that this  
8 Defendant and his co-conspirators believed was going to be at  
9 the stash house.

10 Again, I think the evidence is undisputed that,  
11 at the very least, that's six kilograms that the agent said he  
12 was going to be taking out himself, but again you have the  
13 recordings. He time and time again says it's going to be 30  
14 kilograms that is expected to be left at the stash house.

15 Ladies and gentlemen, I will have an opportunity  
16 to address you again in a minute or when Mr. Burgess is  
17 through.

18 I can tell you that there is absolutely no  
19 federal criminal trial that is ever easy, but there are some  
20 that are straightforward.

21 And I think based on the recordings you have  
22 here, based on Mr. Barkley's testimony that is entirely  
23 consistent with the statements he has given to law enforcement  
24 for nearly a year now, there is no dispute that there was an  
25 agreement to commit an armed robbery, that the object of that

1 robbery was 30 kilograms of powder cocaine, and that Mr. McGee  
2 voluntarily joined in that conspiracy.

3 I'll ask you to return a verdict of guilty.

4 THE COURT: Mr. Burgess.

5 MR. BURGESS: Thank you, Your Honor.

6 Good morning.

7 JURORS: Good morning.

8 MR. BURGESS: This is, unfortunately, the one  
9 and only time -- I do like to have the last word, but,  
10 unfortunately, this is the only time that I do get to talk to  
11 you before you get the case as jurors.

12 As jurors, I would like to thank you in advance  
13 for sitting here, paying attention. Everybody has been very  
14 attentive.

15 I know it wasn't a long trial, and I'm sure all  
16 of you are most likely relieved that it wasn't a long trial.  
17 I'm sure you have heard of federal trials taking weeks and  
18 months. I'm sure you are relieved it was two days. But  
19 myself and Mr. Feller tried to keep you at least awake. So, I  
20 appreciate everybody's attention in this case.

21 I always find it quite interesting when the  
22 Government says it's straightforward. Because when they say  
23 it's straightforward, to me that's code for don't look at it  
24 very closely, don't read between the lines, don't look at the  
25 case under a microscope, which is what you are supposed to do

1 as jurors, but just go ahead and broad stroke it.

2 Because if you look at the case the way it was  
3 created -- and as I said in my opening statement, I say  
4 created because the Government chose and picked what they  
5 would show you in this case. Okay?

6 And, again, as I told you before in my opening  
7 statement, a reasonable doubt is a doubt based on reason and  
8 common sense growing out of the evidence or lack of evidence.

9 Now, I will just touch on a couple of things,  
10 because -- again, and if I say something that is not  
11 consistent with what the Judge says, please follow his  
12 instructions.

13 But in this particular case, you heard from four  
14 witnesses. You also heard that there were several other  
15 witnesses, witnesses that were present at the coney island,  
16 witnesses that were present when Mr. McGee was arrested, a  
17 number of other witnesses that could have been called in this  
18 case that were not. I will touch on that a little bit later.

19 The other thing too is the Government appears in  
20 this case to have the ability to video tape pretty much at  
21 will. They have a hidden video camera on their undercover  
22 agent. They video taped the whole coney island situation.  
23 And, yet, the stuff that would be a little more telling and be  
24 helpful to you is not video taped.

25 They have this surveillance, this take-down spot

1 set up at the storage facility, and, yet, there's really no  
2 video of the outside of it, where the SUV is or what happens  
3 with the SUV. You don't get to see that. They have the  
4 opportunity to do that. You don't get to see the SUV drive  
5 away in this case because I submit to you that Mr. McGee in  
6 this case --

7 First of all, Mr. McGee is -- even though the  
8 Government would like to think otherwise, Mr. McGee is only  
9 mentioned first on February 2nd, but only appears in this  
10 case -- excuse me -- first on February 1st, but only appears  
11 in this case on February 2nd.

12 Now, the Government showed you recordings from  
13 January 18th, January 28th, other recordings that Mr. Porter  
14 talked about a crew. But he also referenced a crew that  
15 didn't have anything to do with Mr. McGee. He referenced a  
16 crew that was partly Nop and partly Nop's cousin.

17 Now, you saw Nop on the video. Nop was not  
18 called to testify. I assume he's available to the Government.  
19 They (sic) chose not to testify. That is some lack of  
20 evidence that you can consider in this case.

21 Mr. Porter is obviously -- and Mr. Feller is  
22 absolutely correct. Mr. Porter is the ringleader in this  
23 case. I don't think that's disputed. Mr. Porter is setting  
24 this up. I mean, according to the agent, he had no problem  
25 getting him to talk. Mr. Porter brags. I mean the video --



1 you weren't shown, but they are in evidence if you want to see  
2 them. Mr. Porter brags further about his exploits, about what  
3 a dangerous guy he is, what a tough guy he is, what he does to  
4 people, how he's known.

5 Two witnesses at least in this case  
6 testified that -- at least the agent testified that he  
7 wouldn't want to meet him in an alley, and the other,  
8 Mr. Barkley, testified that Mr. Porter is a tough guy and he's  
9 scary.

10 So, Mr. Porter I think it's pretty clear is  
11 running this whole situation. Mr. Porter, for whatever  
12 reason -- and, unfortunately, if you had it all video taped  
13 for you, I guess we probably would have less to talk about  
14 here. But unfortunately you don't. You don't have  
15 everything. And you never do as jurors. It would be nice,  
16 but you don't. So, you have to kind of rely on your  
17 collective memories, your collective common sense and think  
18 about this situation, and you can use circumstantial evidence  
19 to make your own conclusions.

20 Because this has to be found beyond all  
21 reasonable doubt. And I say "all reasonable doubt." It is "a  
22 reasonable doubt" in the jury instructions, but I say all  
23 reasonable down because each one of you does not have to have  
24 the same reasonable doubt. Each one of you can have different  
25 doubts in this case.

1                   We all picked you because you are reasonable.  
2                   So, any doubt any of you are going to have is a reasonable  
3                   one, first of all.

4                   Secondly, you don't have to agree on the same  
5                   reasonable doubt when you go back and deliberate. That's not  
6                   required. If you all have hesitation in your mind, if you  
7                   think about this case and go, hmm, as reasonable people you  
8                   now have a reasonable doubt.

9                   So, with that in mind, think about a logical  
10                  conclusion in this case. Mr. McGee is not mentioned until  
11                  February 1st.

12                  Now, again, the Government wants to put all this  
13                  extraneous stuff in here and wants you to keep your eyes off  
14                  the prize, because they figure if they throw enough junk at  
15                  the wall something will stick for you.

16                  They want to throw in all these guns found in  
17                  Mr. Porter's house in Mr. McGee's case. These guns have  
18                  nothing to do with Mr. McGee. The Government would probably  
19                  argue otherwise and say it was part of the whole conspiracy.  
20                  But what they are really trying to do in this case is just  
21                  paint Mr. McGee in a bad light.

22                  The one gun they claim is found in the  
23                  basement -- and, again, they called one witness to testify in  
24                  this case. Nine or ten people in this house that did this  
25                  raid? Not even the first one on the scene in the basement?

1 And you are supposed to believe one witness, that Mr. McGee is  
2 down there in the basement with the gun?

3 By the way, the gun is behind the couch. The  
4 gun is not printed. There is no physical evidence to suggest  
5 that Mr. McGee has any connection to this gun unless you want  
6 to believe Mr. Barkley. And I'll get to him in a minute.

7 When it comes down to it, what you have here is  
8 you have Mr. McGee in one setting bragging, talking about a  
9 bunch of crap, trying to get himself pumped up at that point  
10 in front of Mr. Porter. Then they leave this situation --

11 And if you want to believe Mr. Barkley, that's  
12 up to you. But think about Mr. Barkley's testimony in a  
13 certain light here. Mr. Barkley is a snitch, first of all.  
14 And by itself, I'm not saying that you have to discount his  
15 testimony only because he's a snitch, but let's think further  
16 about what Mr. Barkley is.

17 Mr. Barkley since he has been an adult, and  
18 probably earlier than that, has been a drug dealer his whole  
19 life. Since he has been an adult, since the mid 90's, he has  
20 been a drug dealer. He's also a home invader. And he also  
21 has admitted to at least two home invasions in front of the  
22 jury, in front of you all, where he went in and went to home  
23 invade some place, to get drugs and to sell them; very  
24 consistent with what we have here.

25 But Mr. Barkley would have you believe that he

1 was called in the last second. You know, even though he did  
2 this in November of 2009, he was called in at the last second  
3 here because it was Mr. McGee here that recruited Mr. Barkley.  
4 And that's what he would have you believe.

5 However, there is no evidence to suggest  
6 Mr. McGee was involved in a home invasion in November of 2009.  
7 The Government would say, yeah, but he was involved in a  
8 robbery the day before.

9 Really? Where's the charge? Where's the  
10 evidence?

11 There is no charge against Mr. McGee for a  
12 robbery that occurred on February 1st, because they couldn't  
13 even have, as the officer testified today, probable cause to  
14 even get a warrant for that case. They don't even have enough  
15 evidence to charge, much less convict, Mr. McGee of anything.

16 Apparently, whatever agency is handling that  
17 matter -- I believe it's Detroit -- doesn't have a lot of  
18 faith in just Mr. Barkley's testimony, which is the only thing  
19 that really gets you as far as -- gets you to Mr. McGee being  
20 involved in the February 1st supposedly robbery in this case.

21 So, Mr. McGee is brought in at the last minute  
22 by Mr. Porter, a man that two witnesses say is a scary guy.  
23 And Mr. McGee talks on the tape, admittedly, a bunch of crap  
24 in this case about doing this or doing that or whatever,  
25 leaves the scene -- and if you want to believe Mr. Barkley

1 that these guns were picked up or dropped off here and there,  
2 that's up to you. There's, again, no physical evidence, no  
3 guns found in the SUV after it's searched by the police, no  
4 guns ever verified at the scene by the undercover officer. He  
5 didn't look in the SUV. There's no guns other than  
6 Mr. Barkley saying that Mr. McGee handled some guns. There's  
7 no evidence.

8           So, you have Mr. McGee -- who, by the way, if  
9 Mr. McGee is so tight with Mr. Porter, why is he driving in  
10 another vehicle -- he makes the effort to go to his cousin's  
11 house, gets in another vehicle with his cousin. No one to do  
12 with any of this whole plan, by the way. His cousin, who was  
13 not involved in this plan -- there's nothing about the cousin  
14 being met at this coney island. He gets in the car with  
15 someone completely uninvolved in this case, in an SUV, someone  
16 who he is a relative of according to the testimony, someone  
17 who has nothing to do with this case and someone who is not  
18 affiliated at all with any of this situation and was still  
19 unknown at this point.

20           He gets in this car, this SUV with his cousin,  
21 and they follow Mr. Porter. They get over to this liquor  
22 store and then they drive to this other area. The SUV goes by  
23 the place.

24           And, again, the Government will say, well, they  
25 didn't have the code. You heard the thing talking about the

1 code.

2 We only heard one side of the conversation,  
3 first of all. They don't have the other side of it. I don't  
4 know whose phone that was, but they pretty much recorded  
5 everything they chose to record in this case.

6 But be that as it may, that car does not go in,  
7 does not try to go into this area. Leaves the area.

8 Now, the Government will probably argue in its  
9 rebuttal that, well, he left the area because he knew  
10 something was up.

11 Really? Where's the evidence of that? Please,  
12 show me the evidence of that.

13 Other than the fact that Mr. McGee in this case,  
14 even though he talked a lot, never intended to -- throughout  
15 this whole situation, never intended to be involved in this.

16 And the Judge will instruct you on this, and I  
17 will just point it out to you, that in one of the instructions  
18 in this case, to convict a Defendant, the Government must  
19 prove that he knew the conspiracy's main purpose and that he  
20 voluntarily joined it intending to help advance or achieve its  
21 goals.

22 Mr. McGee never ever joined this conspiracy  
23 intending to help, advance or achieve its goals.

24 However, whatever influence Mr. Porter has, you  
25 can reasonably conclude from circumstantial evidence. What

1     you do know about Mr. Porter is he's a scary, violent guy.

2                     Whatever interaction came between Mr. Porter and  
3     Mr. McGee, I don't know. But we all know. We all know the  
4     old adage actions speak louder than words.

5                     When Mr. McGee is in Mr. Porter's sight, in his  
6     presence, he talks a good game. When he's away from  
7     Mr. Porter, he leaves the scene. Because Mr. McGee never ever  
8     joined this conspiracy. He never ever intended to help  
9     advance or achieve the goals here. As soon as he was away  
10    from Mr. Porter, he left. He's gone.

11                    Now, again, the Government will probably say,  
12    well, he left because he knew this.

13                    Well, these flash bangs went off after this car  
14    had already parked.

15                    And, by the way, think about this as well.  
16    After February 2nd, Mr. McGee is in constant contact with --  
17    according to the Government -- with Mr. Porter during this  
18    thing that's going on, calling him about the numbers, all this  
19    other stuff.

20                    Not one piece of evidence to suggest that  
21    Mr. McGee made any effort to contact Mr. Porter or anybody  
22    else once he drove away from the scene in this particular  
23    situation. Not asked these guys what happened, what was the  
24    deal, are we going to do another one. Nothing. No evidence.

25                    Mr. McGee cut ties from this whole situation

1 when he drove away from that scene because he never intended  
2 to help advance or achieve the goals of this conspiracy.

3 Now, as far as the Government saying -- and they  
4 do pick and choose what they choose to tell you. And it's  
5 your job to really look at everything -- not pick and choose,  
6 but look at everything before making a decision.

7 They say, well, he took off. He took off. It's  
8 flight. He must be guilty.

9 Well, he took off because he didn't want to be  
10 involved anymore. And the flight instruction also indicates  
11 that there's all kinds of innocent reasons to leave. I think  
12 that it's reasonable to conclude and as reasonable people, you  
13 can also conclude that Mr. McGee left the scene because  
14 actions speak louder than words.

15 Mr. McGee never had any intent to be involved in  
16 this conspiracy. Whatever influence Mr. Porter had over him  
17 was gone when Mr. McGee jumped in the car with his cousin, not  
18 involved with this case, in a different vehicle, drove near  
19 the area and drove away. And he never looked back.

20 Now, as far as -- one other thing I mentioned in  
21 my opening. As far as Mr. Barkley's testimony goes, take it  
22 for whatever it's worth. There's a special jury instruction  
23 on snitch witnesses. I believe it's referred to as  
24 cooperating witnesses. I apologize. But there's a special  
25 instruction on that because you are supposed to give them



1 special consideration.

2 When these officers -- when these agents go to  
3 talk to him with this case in their mind, with their goals in  
4 this case in mind, and when they go to talk to him, I  
5 guarantee to you -- please listen to the tapes if you'd  
6 like -- the answers are either intentionally or  
7 unintentionally suggestive to Mr. Barkley.

8 And Mr. Barkley knows that if he's not helping  
9 the Government in this case, if he's not offering some  
10 assistance in order to attempt to convict Mr. McGee, he's not  
11 getting a deal. Cooperation is not like, oh, let me get that  
12 gum off the bottom of your shoe. No. They want some kind of  
13 substantial assistance that is right in the cooperation  
14 agreement or they have the discretion not to help out  
15 Mr. Barkley at all.

16 Mr. Barkley I think downplays -- and I think  
17 that's human nature. Mr. Barkley downplays his role in this  
18 whole situation. I think Mr. Barkley is much more involved in  
19 this case. I think he was probably involved a lot earlier  
20 than he let's on. And I think that's consistent with what  
21 Mr. Barkley has done in the past, admittedly.

22 Now, again, I ask you to keep your eyes on the  
23 prize. The rest of this, the guns found in Mr. Porter's  
24 house, the mention of an uncharged, unproved robbery, all this  
25 other stuff, to the elements in this particular case are

1 meaningless. The Government will argue probably in the  
2 rebuttal otherwise, but all this other stuff is extraneous --  
3 excuse my language -- crap for purposes of trying to elicit a  
4 desired response by the Government.

5 What I propose to you, again, through the  
6 evidence -- not through me manufacturing anything or creating  
7 anything, but just from the evidence that has been presented  
8 by the Government, what I propose to you -- is reasonable and  
9 is what happened in this case -- is that Mr. McGee, for  
10 whatever reason, even though he talked a good game in front of  
11 Mr. Porter, never had any intent to advance or achieve the  
12 goals of this conspiracy.

13 And because that's the case, because that  
14 scenario is so likely in this case, because it's a reasonable  
15 one, as jurors, if you do your jobs and look past the  
16 extraneous evidence in this case, if you look past that and do  
17 your job as jurors, there's only one verdict you can conclude;  
18 in that it's reasonable that Mr. McGee did not intend to  
19 advance or achieve the goals of this conspiracy; and as a  
20 result of that, there's only one verdict, and it's not guilty.

21 Thank you.

22 THE COURT: Thank you.

23 The Government has rebuttal?

24 MR. FELLER: Yeah. Let me get page four and  
25 five of the jury instructions.

1                   This is the instruction, it is at page four.

2                   Mr. Burgess talked about reasonable doubt and  
3 sort of gave you a definition of what a reasonable doubt is.  
4 Let's look at what the actual definition is, and it's in  
5 paragraphs four and five on the next page.

6                   Nope. Next page.

7                   "Proof beyond a reasonable doubt does not mean  
8 proof beyond all possible doubt. Possible doubts based purely  
9 on speculation are not reasonable doubts. A reasonable doubt  
10 is a doubt based on reason and common sense. It may arise  
11 from the evidence, the lack of evidence, or the nature of the  
12 evidence.

13                   "Proof beyond a reasonable doubt means proof  
14 which is so convincing that you would not hesitate to rely and  
15 act on it in making the most important decisions in your own  
16 lives."

17                   Now, ladies and gentlemen, one of two things  
18 must be true. Either Mr. McGee is guilty or literally every  
19 witness you heard from, in Mr. Burgess' version of events,  
20 must be lying. Agent Nether must be lying to you about the  
21 fact that he was on the phone with Mr. McGee as he was trying  
22 to get into the storage facility. Agent Pacholski -- I don't  
23 know what he did wrong -- he's lying about the fact that he  
24 arrested Mr. McGee or was involved in the arrest and found  
25 Mr. McGee in the basement where a firearm was also involved.

1 Mr. Barkley is lying --

2 And if we can have Exhibit 10, page two, and if  
3 we can highlight that top.

4 Mr. Barkley is lying even though he has told the  
5 exact same version of events -- and you have it in his report  
6 on February 2nd, seven, eight months ago, and on February  
7 22nd -- and even though Mr. Barkley knows -- and this is one  
8 of the first things I covered with him -- that the only way he  
9 gets any recommendation from the Government is if he tells the  
10 truth.

11 So, all of those folks -- I guess Agent Jury is  
12 okay. But all of those folks have to be lying to you for that  
13 version of events to be true.

14 Now, you heard from Agent Nether. You heard  
15 from Mr. Barkley. You heard from Agent Jury. You heard from  
16 Mr. Pacholski. But you heard from somebody else as well.

17 You heard from Dennis Porter talking to the  
18 undercover informant the day this robbery is supposed to have  
19 occurred. He doesn't have any reason to brag to the  
20 informant. He doesn't have any reason to lie to him. He  
21 doesn't have any reason to do anything but tell him the  
22 complete truth, because the very next day he's going to be  
23 risking his life in a robbery -- it's not just a robbery.  
24 It's a robbery of a Mexican Drug Cartel -- with the undercover  
25 informant.

1 Dennis Porter doesn't have a deal. Dennis  
2 Porter didn't appear in front of you with some incentive to  
3 lie. You heard from Dennis Porter in a candid conversation  
4 the day before the robbery was to take place. And what does  
5 Dennis Porter have to say?

6 Can we have Clip 1.

7 *(Exhibit 1, Clip 1 played in open court.)*

8 MR. FELLER: Can I have that one more time,  
9 please.

10 *(Exhibit 1, Clip 1 played in open court.)*

11 MR. FELLER: This is the robbery that was going  
12 to take place the next day. And Mr. Porter says, "Yeah, it's  
13 me, you, Stir, and Country."

14 And who shows up the next day at the coney  
15 island?

16 Stir, Mr. McGee.

17 Now, we saw the video of what's going on at the  
18 coney island. And Mr. Burgess says, well, you know what.  
19 What's really happening here is Mr. McGee, he's just somebody  
20 who boasts. He's somebody who brags. He's scared of Mr.  
21 Porter; so, he's telling Mr. Porter he's going to be involved,  
22 but he didn't really mean it.

23 Again, as a matter of law, the Judge will  
24 instruct you none of that makes any difference. The crime is  
25 completed when the agreement is made, when Mr. McGee agrees to

1 participate. That happened at the coney island. Everything  
2 else after that doesn't matter.

3 But you know what. Mr. Burgess is just plain  
4 wrong.

5 Let's say Mr. McGee is afraid of Mr. Porter.  
6 Let's say Mr. McGee just -- you know, he wants to show up at  
7 the coney island. He wants to tell Mr. Porter he's going to  
8 participate and then he wants to hightail it out of there.  
9 That's all he wants. And Barkley is lying about going to get  
10 the gun. Okay? Let's say all of that is true.

11 Then what possible explanation is there for  
12 Mr. McGee, in a red Mercury Mariner, that Mr. Porter is not  
13 in -- he's with his cousin. Why on earth, after leaving the  
14 coney island, does he then come back after going to get his  
15 gun, come back and meet up with everybody at that liquor  
16 store?

17 Let me have Clip 2.

18 *(Clip 2 played in open court.)*

19 MR. FELLER: Mr. McGee to the undercover agent.  
20 He comes to the liquor store and says, "What do you want me to  
21 do?"

22 And, again, even after the liquor store, he's in  
23 the red Mercury Mariner with his cousin. Not with Mr. Porter.  
24 He doesn't have anything to be scared of. Mr. Porter is in a  
25 separate car with Mr. Barkley. And you know what. He gets

1 into the storage facility, and he's behind a locked gate, that  
2 Mr. McGee is having trouble getting through.

3 And so what does Mr. McGee, this man who is  
4 terrified of Mr. Porter, who is just bragging, who just can't  
5 wait to get the heck out of there, what does he do? He gets  
6 on the phone with Agent Nether for instructions on how to open  
7 the gate.

8 Clip C 3.

9 *(Clip C3 played in open court.)*

10 MR. FELLER: Does that sound like somebody who  
11 is terrified and is trying to get away from Mr. Porter?

12 And then what happens? Then what happens?

13 Let's go with Mr. Burgess as far as, well, six  
14 flash bang grenades all wired together.

15 Yeah, that's pretty scary. I would be scared  
16 too.

17 So, Mr. McGee he takes off and, you know, he's  
18 scared of that and he drives away. Okay. Let's go with him  
19 as far as that.

20 But then he abandons the car and runs off in the  
21 snow on foot. Is that what you do if you're innocent, if you  
22 haven't done anything wrong, if you weren't planning a  
23 robbery? You would take off and start running on foot?

24 And then for weeks, for weeks the search was  
25 going on. You don't go home. You don't go to family members.

1 You hide out in some guy's basement with, by the way, a gun  
2 that Mr. Barkley told you about.

3 It's not that Mr. Barkley is up here testifying  
4 and just making things up. That's not how you evaluate him;  
5 well, did he seem like he was telling the truth or not. It's  
6 the things he told you, the details he told you, were those  
7 consistent with the other evidence. Was it consistent with  
8 the fact that some guys from the robbery of the day before  
9 were found in Mr. Porter's house, as both Mr. Barkley and  
10 Agent Jury testified about.

11 Is it consistent that a gun is found with -- is  
12 this a coincidence that this guns who happens to go to coney  
13 island and happens to agree to participate in a robbery,  
14 happens to meet em' at a liquor store, happens to try to get  
15 into the storage facility and punch in the code, happens to  
16 run away in the snow, happens to then be hiding out in some  
17 guy's basement and then there just happens to be a gun behind  
18 the couch?

19 And this is what we call physical evidence.

20 Ladies and gentlemen, there's a fair amount of  
21 video in this case. There's a fair amount of testimony. But  
22 I submit to you that this one clip -- it is impossible to  
23 reconcile this clip with anything other than the existence of  
24 an agreement and Mr. McGee's participation in it.

25 5, 3, please.



1                   *(Exhibit 5, Clip 3 played in open court.)*

2                   MR. FELLER: We're going to come in with  
3 choppers. We're going to come in with masks. It should go  
4 smooth."

5                   Ladies and gentlemen, on behalf of the United  
6 States, I ask you to return a verdict of guilty.

7                   Thank you.

8                   THE COURT: Thank you.

9                   Now, we have to eliminate two of the jurors, and  
10 Ms. Ware will do that with our famous box of numbers.

11                   *(Case Manager Ware pulls two jurors' names from*  
12 *the box.)*

13                   THE COURT: Juror No. 1 and Juror No. 5. Thank  
14 you very much.

15                   Please take whatever you have in the jury room  
16 and bring it out here, because we have some certificates for  
17 you. And thank you.

18                   How many lunches did we get, Ms. Ware?

19                   CASE MANAGER WARE: 14.

20                   THE COURT: You can't sit in on deliberations,  
21 but you are more than welcome to take the lunch. I guess I  
22 should apologize that it's not coney islands.

23                   Just leave those in the jury room.

24                   *(Juror Nos. 1 and 5 leave the courtroom at 12:05*  
25 *p.m.)*

1           THE COURT: Okay. For the rest of you, now it's  
2 time that you can talk about it after I give you the  
3 instructions.

4           So, you have a copy of the instructions in your  
5 hand. There are three ways to use it and one way that I ask  
6 that you not use it.

7           The good ways are -- and it's your choice --  
8 read along with me, not read along with me, or read along with  
9 me part of the time and not read along part of the time.

10          What I would ask that you not do is to be  
11 reading page ten when I'm reading page five, because while we  
12 have two ears and two eyes, we only have one brain, and it can  
13 only be focusing on one or the other.

14          So, please focus on what I'm reading either by  
15 reading along with me or not reading along with me, but don't  
16 read a different page.

17          And as I indicated, these are yours. You can go  
18 into the jury room with them. If you want to make notes on  
19 them --

20          If you'll just wait in the back for a minute.

21               *(Off the record.)*

22          THE COURT: And I may misread something. If I  
23 find something here that's wrong, even though it has all been  
24 proofread several times, I will tell you I'm saying something  
25 different than is printed. If I misread it and there's any

1 difference in what I'm saying, it's the pages that control.  
2 But I haven't made a mistake since about seven o'clock this  
3 morning. So, hopefully I won't misread anything.

4 *(The Court read the jury instructions to the*  
5 *jury. The jury instructions were not*  
6 *transcribed.)*

7 \* \* \*

8 MR. FELLER: Your Honor, I know Ms. Oliver is  
9 working on getting a computer ready. She has not yet  
10 returned. So, I don't know whether we want to break or --

11 THE COURT: All right. We are working on  
12 getting a computer.

13 Is it agreeable to both counsel that she should  
14 be allowed to go in the jury room just to show how the  
15 computer works?

16 MR. FELLER: Absolutely, Your Honor.

17 MR. BURGESS: I have no problem with that.

18 THE COURT: Okay. You can start your  
19 deliberations.

20 The first thing, as I said, is to select a  
21 foreperson. Maybe the second thing is to eat your lunch or  
22 you can do both at the same time. But hopefully your lunch is  
23 here.

24 So, all rise for the jury.

25 You may now begin -- I have to swear in the

1 court officer.

2 (Bailiff sworn.)

3 THE COURT: Hang on a second. All of you have a  
4 verdict form. But the only one that counts is the  
5 foreperson's, and that will be given to me when you reach a  
6 verdict in open court. I will look at it and then give it  
7 back to the foreperson.

8 The rest of you have the verdict form for a  
9 reference point. Okay?

10 *(Jury leaves the courtroom at 12:47 p.m.)*

11 THE COURT: You have not been forgotten in the  
12 back.

13 Do you have any objections to the instructions?

14 MR. FELLER: No, Your Honor.

15 MR. BURGESS: No, Your Honor.

16 *(Recess held at 12:48 p.m.)*

17 *(Jury enters the courtroom at 2:15 p.m.)*

18 THE COURT: Everyone please be seated.

19 The jurors are present and in their place, and I  
20 have a note that indicates there's a verdict.

21 If the foreperson would hand it to Ms. Ware,  
22 please.

23 *(The verdict form is handed to the Court.)*

24 THE COURT: Ms. Ware, if you would return it.

25 If the foreperson would stand and please read

1 the verdict, please.

2 JUROR NO. 9: "Count 1, conspiracy to possess  
3 with intent to distribute controlled substances.

4 "As to Count 1 of the First Superseding  
5 Indictment, conspiracy to possess with intent to distribute  
6 controlled substances, we, the Jury, after full consideration  
7 and due deliberation, unanimously find the Defendant, Alistair  
8 Rufus McGee, guilty.

9 "If you find the Defendant, Alistair Rufus  
10 McGee, guilty as charged in Count 1, please proceed" -- okay.

11 "We, The jury, having found the Defendant,  
12 Alistair Rufus McGee, guilty of the offense charged in Count  
13 1, we, the Jury, find the following amount of cocaine was  
14 involved in the offense:

15 "More than 5 kilograms."

16 THE COURT: Thank you.

17 And you signed that?

18 JUROR NO. 9: Yes, I did.

19 THE COURT: All right. You may sit down.

20 Please return the verdict to Ms. Ware, please.

21 I'm going to ask each and every one of you --  
22 and, again, I'm going to refer to you by number out of my own  
23 laziness rather than rudeness.

24 Juror No. 3, is that your verdict?

25 JUROR NO. 3: Yes, it is.

1 THE COURT: Juror No. 4.

2 JUROR NO. 4: Yes, it is.

3 THE COURT: Juror No. 6.

4 JUROR NO. 6: Yes, it is.

5 THE COURT: Juror No. 7.

6 JUROR NO. 7: Yes, it is.

7 THE COURT: Please hand it straight back.

8 And you are Juror No. 2, right?

9 JUROR NO. 2: Yes. That is my verdict.

10 THE COURT: Juror No. 14.

11 JUROR NO. 14: Yes, it is.

12 THE COURT: Juror No. 13.

13 JUROR NO. 13: Yes, it is.

14 THE COURT: Juror No. 12.

15 JUROR NO. 12: Yes, it is.

16 THE COURT: Juror No. 11?

17 JUROR NO. 11: Yes, it is.

18 THE COURT: Juror No. 10?

19 JUROR NO. 10: Yes, it is.

20 THE COURT: Juror No, 9, you have already told

21 us, but tell us again.

22 JUROR NO. 9: Yes, it is.

23 THE COURT: Juror No. 8.

24 JUROR NO. 8: Yes, it is.

25 THE COURT: Okay. Anyone have any questions

1 before I discharge the jury?

2 MR. FELLER: No, Your Honor. Thank you.

3 MR. BURGESS: No, Your Honor.

4 THE COURT: Okay. You are discharged with  
5 thanks.

6 Please wait in the jury room. I have some  
7 certificates.

8 Rise for the jury, please.

9 Leave those jury pins too, please, because they  
10 are hard to get.

11 *(Jury leaves the courtroom at 2:28 p.m.)*

12 THE COURT: Anything anyone wants to put on the  
13 record?

14 MR. FELLER: Yes, Your Honor.

15 Pursuant to 3143(b)(2), the Government seeks  
16 remand of this Defendant. Pursuant to that statute remand is  
17 mandatory in any drug case punishable by more than 10 years  
18 imprisonment.

19 The mandatory minimum here is 10 years, barring  
20 exceptional circumstances.

21 Here, we have a Defendant who is unemployed,  
22 unmarried, no children, involving a violent offense. We  
23 have -- we were here just last week on a -- because he had  
24 been arrested for drunk driving, had violated his tether on  
25 five occasions. We also have a civilian witness, cooperating

1 Defendant who had testified that if this Defendant is out,  
2 presents a risk there.

3 So, for all of those reasons, Your Honor, and  
4 given what is a 10-year mandatory minimum sentence and  
5 possibly significantly more, the Government would ask for  
6 remand.

7 THE COURT: Mr. Burgess?

8 MR. BURGESS: Your Honor, pursuant to 18 USC  
9 3145(c), the Court has discretion under certain circumstances  
10 to allow my client to remain out on bond.

11 My client has always appeared. His pretrial  
12 officer is in constant contact with him. Obviously last week  
13 at the pretrial he made efforts immediately, when he found  
14 out, to contact me, myself, as well as the pretrial. He has  
15 always appeared in court with family and girlfriend.

16 I think that he has community ties, as well as  
17 his appearance at his court dates in this case and his  
18 pretrial, allow him to remain out on bond at presentencing.

19 THE COURT: Are you working?

20 MR. McGEE: No, sir.

21 THE COURT: Pardon?

22 MR. McGEE: No, sir.

23 THE COURT: What do you do all day?

24 MR. McGEE: For the last couple of weeks I done  
25 had my kids. I been just with my kids.



1 THE COURT: How old are your kids?

2 MR. McGEE: I have one daughter 14. I have a  
3 daughter 11. I have a son that will be three on October 19th.

4 THE COURT: I'm going to ask for a new report  
5 even though he was here a week or two ago.

6 What has happened with the drunk driving?

7 MR. McGEE: I go on October 15th.

8 THE COURT: I am going to ask pretrial for a new  
9 report.

10 Bond will be continued until we get that report,  
11 and a hearing date will be set.

12 MR. BURGESS: Thank you, Your Honor.

13 MR. McGEE: Thank you, Your Honor.

14 THE COURT: You are free to go, but you have a  
15 lot of responsibility to show up.

16 MR. McGEE: Yes, sir.

17 THE COURT: Okay. Because that 10 years is  
18 going to look like a small amount of time when they add on for  
19 whatever they can add on for not showing up.

20 MR. McGEE: I'll be here.

21 THE COURT: All right. Thank you.

22 MR. McGEE: Thank you.

23 MR. BURGESS: Thank you, Your Honor.

24 THE COURT: Let's have a sentencing date,  
25 please, Ms. Ware.

1 CASE MANAGER WARE: February the 10th, 2:30.

2 THE COURT: Wait a minute. 90 days sometime.

3 CASE MANAGER WARE: January the 10th.

4 THE COURT: January the 10th. What time?

5 CASE MANAGER WARE: 2:30.

6 THE COURT: Okay. Are you available?

7 MR. FELLER: I will be here, Your Honor.

8 MR. BURGESS: I am available, Your Honor.

9 THE COURT: Okay.

10 MR. BURGESS: Thank you, Your Honor.

11 THE COURT: And you are available?

12 MR. McGEE: Yes, indeed.

13 THE COURT: Okay.

14 MR. McGEE: Thank you again.

15 THE COURT: You are welcome.

16 MR. FELLER: Your Honor, I'm sorry. I don't  
17 know what your policy is with regard to speaking to the jurors  
18 afterwards.

19 THE COURT: I go and talk to them. And --

20 Do you want to talk to them?

21 MR. FELLER: If I could, sure.

22 THE COURT: I ask them if they want to stick  
23 around, and then I will come and invite you.

24 What about you, Mr. Burgess?

25 MR. BURGESS: That's up to them. If they

1 want to --

2 THE COURT: No, no. Do you want to?

3 MR. BURGESS: I don't have any interest in  
4 talking to the jury, Your Honor, unless they want to speak to  
5 me for some reason.

6 *(Proceedings adjourned at 2:34 p.m.)*

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14 STATE OF MICHIGAN )  
15 ) ss.  
COUNTY OF WAYNE )

16

17 I, Denise A. Mosby, Federal Official Court Reporter, do  
18 certify that the foregoing is a correct transcript from the  
record of proceedings in the above matter.

18

19 s/ Denise A. Mosby

20

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24 Dated: MARCH 22, 2011

25